

4 February 2022

Dear Australian Human Rights Commission

**Re: National Anti-Racism Framework Submission**

Thank you for this opportunity to make a submission on your concept of an Australian Anti-Racism Framework.

The Australian Muslim Advocacy Network (AMAN) seeks to create a safer and more inclusive Australia by safeguarding Australian Muslims' equal rights and protections.

We engage directly with platforms and industry bodies, including the GIFCT and the Christchurch Call to Action. We have engaged and published with researchers and NGOs across Australia and internationally. We participated in the *Australian Code of Practice on Misinformation and Disinformation* consultation process.

We have also practised in the field of applying existing vilification laws to online hate speech.

Recognising the power of harmful political discourse, we took successful legal action against former Senator Fraser Anning.

We have a live racial discrimination complaint before the Commission in relation to Meta/Facebook.

Recognising the power of media, we have engaged directly with news editors on headlines and reporting practices that essentialise and dehumanise Muslims. Recently, we have begun engagement with the Australian Communications and Media Authority on its legislative powers, as it relates to Sky News.

Recognising that hateful echo chambers are a public harm, not a private one, we have also proposed civil penalties through a notice and action model for actors that serially publish dehumanising language or discourse – creating a consequence for both the individuals and the platforms that amplify this practice.

Recognising the highly potent capability for legislation to set racist norms as 'truths' through the reinforcing interaction of legislation, law enforcement, judiciary, and media, we have begun to focus our attention on 'religious cause' within the definition of terrorism.

We have been invited to present at recent Parliamentary Inquiries on Social Media and Online Safety, and Religious Discrimination.

Our journey to address the social conditions that led to the Christchurch massacre by an Australian terrorist has led us to test federal and state protections. We have studied and analysed the eco-system of racism from academic, practitioner, and community angles. From this experience, we are pleased to make recommendations about the Framework. We thank you for the pertinent questions it raises.

Any inquiries about the contents can be directed to Rita Jabri Markwell at [advocacy@aman.net.au](mailto:advocacy@aman.net.au).

Yours faithfully,

**AUSTRALIAN MUSLIM ADVOCACY NETWORK (AMAN)**

A handwritten signature in cursive script that reads "Aman". The signature is written in black ink and is positioned to the left of the center of the page.

## **ACKNOWLEDGEMENT OF COUNTRY**

AMAN acknowledges the traditional custodians of the land we work upon across this continent, the Elders and Ancestors who have walked this land before us.

What are the issues/areas on which the framework can best provide guidance?

1. **Shift the burden** of contending with racism from affected individuals and communities to the whole of society by making it part of the core business of relevant regulators, like the e-Safety Commissioner, ACMA, the ACCC, and a new Federal Integrity Commission in Parliament.
2. Focus on measures that address **political and media discourse**, as well as laws that feed political and media discourse, given the heightened effect they have in stoking racial prejudice and fueling hate movements.
3. Build resilience with the Australian population to dehumanising discourse.

Are there best practice stories of anti-racism, social inclusion, social cohesion, and diversity and inclusion initiatives to share?

This framework must focus on legal, evaluative (data), and process settings – repairing the gaps and flaws that make racism worse in Australia.

Successive governments have invested heavily in 'social cohesion' measures while diminishing social cohesion through political and legislative decisions (including failures to act). For example, investing in anti-racism measures to support various communities like the Muslim community is justified. Still, it is done alongside continuing counterterrorism laws that perpetuate racially discriminatory public discourse (Hardy 2011), media and political discourse (see References) and diminish social and emotional wellbeing for affected community (Bedar et al. 2020; Iner 2019; AHRC 2021), social cohesion (Markus 2020) and democratic freedoms (Akbarzadeh 2021; ALRC 2015; Cherney and Murphy 2016).

The framework must focus on **avoiding harm**. That means it must address the potent drivers of racism, even when those drivers are public laws and institutions.

In terms of 'anti-racism programs,' the Framework should perhaps comment on a process for determining measures with the greatest transformative effect.

How can we embed evaluation and accountability measures within the framework?

A Prime Minister's annual report to Parliament on the International Day to Eliminate Racial Discrimination would be welcome.

Under each outcome being measured, the report must name and discuss whether the Framework relies on self-regulatory, co-regulatory, or regulatory approaches to achieve that outcome. There needs to be an ongoing discussion about the effectiveness of approaches and not a mindless repetition of statistics without discussing strategy.

An ongoing stakeholder group with practitioner and community service experience should co-design these evaluative settings. Researchers with expertise from various community backgrounds must be included, recognising that racism and hatred manifest differently for First Nations Peoples compared to Muslims (also acknowledging overlap between communities). Some research consortiums may present themselves as 'covering all' but have not established multi-stakeholder governance that includes community data collection points. Therefore this Framework is not best outsourced to a consortium to manage. It carries a public interest and stakeholder inclusion imperative that aligns better with a public statutory authority. Different imperatives govern research consortiums, including securing and maintaining funds and academic competition.

We also need to ensure that staff (including government) working on delivering and monitoring this framework reflect Australia's natural, cultural diversity.

#### What principles should guide the framework?

The current proposed Guiding Principles are quite generic. They do not provide enough guidance about how the Framework should be carried out.

We thank the Islamophobia Register Australia for their work in proposing new principles for the Framework, which we have adapted below, under the four following headline principles:

1. First Nations Peoples' Self Determination has distinctive importance.
2. Human dignity is maintained through support.
3. Human dignity is maintained through voice.
4. The Anti-Racism Framework must be transformative.

#### **First Nations Peoples' Self Determination**

Acknowledge and recognise First Nations Peoples, recognizing their special rights under the Declaration on the Rights of Indigenous Peoples, including the right to self-determination, culture, country, and social justice. We should avoid positioning First Nations Peoples as 'our Indigenous people' or Australia's Indigenous people. Their history and identity pre-dates Australia.

#### **Dignity through support**

All persons who suffer racism must enjoy universal, acceptable, affordable, unconditional, open, meaningful, and equal access to advice and support that enables them to feel a sense of control and certainty.

Support and protect unrestricted access to information to Australians, including young Australians, on racism, the harms of racism, and what society does in response.

Support doesn't mean just after harm has happened. The best support happens by preventing harm by acting to disrupt the sources of online dehumanisation of communities identified based on protected attributes.

Treat racism as a public health concern and a whole-of-society problem by shifting the burden from affected people to bystanders, institutions, and regulators.

Recognise that some forms of racism are more mainstream than others. Australia must face the most mainstreamed and entrenched forms.

Protect the Racial Discrimination Act, including section 18C, as important legislation that sets norms and creates safe conditions for all Australians to participate in public life.

Recognise that racism can be based on cultural superiority and racial superiority. Therefore communities identified by their faith, asylum seeker, or immigrant status can be equally subject to racism.

### **Dignity through voice**

Enable people affected by racism to design anti-racism policies and this Framework.

Democratise policy making affecting the internet and address technology-related violence in all its forms

Allow space for contested claims, grievances, disagreement, and resistance within the community and provide mechanisms to manage disagreement and promote civil dialogue.

Defend freedom of expression as an inclusive concept and reject the hierarchisation of citizenship and rights.

Accept if a person's community and culture are not represented positively in the media and culture of their time, then there is a loss of a sense of self and feeling real. Amplify narratives and lived realities of First Nations, CALD, and women and other marginalised community segments within those groups, taking an intersectional approach. Showing the diversity of humanity within every community is an antidote to narratives that essentialise and 'other' specific communities.

**The Anti-Racism Framework must be transformative.**

Demand accountability and transparency from government and public institutions. Australia represents its values in the laws it makes, in the actions and policies of governments, and in the way the media and public dialogues about government policies.

Reinforce that Australian institutions should reflect the general population's diversity, including leadership levels.

Facilitate connections across the country and cultures and create opportunities for sustained movement building.

Challenge monocultural and patriarchal spaces and processes and put more First Nations, CALD, and young people at the decision-making tables.

Promote, disseminate, and share knowledge about the use of open-source software and data management systems while respecting community data-collection, ownership, and access to their respective data for advocacy purposes.

[What is your vision for a more inclusive, equal, and harmonious future in Australia?](#)

An Australia that is compassionate, forgiving, humane. An Australia that appeals to people's humanity and higher character. An Australia that honours international law in its foreign policy pronouncements promotes social justice and cohesion at home. In Australia, every person can see people like them on the news and stories like theirs on the screen. Every person can occupy public spaces and aspire to any career without fear of intimidation, exclusion, or limits because of their race or religion. An Australia guided through dealing with its unfinished business with First Nations Peoples. An Australia that defines its identity not by one culture or way of life but by our love for this land and humanity. We ask immigrants to bring their cultures with them, acknowledging the positive values that transcend cultures, religions, and different nations.

[What outcomes and strategies are necessary for the framework to create change?](#)

The Anti-Racism Framework needs to clarify the obligations of governments and other public institutions. The submission addresses outcomes and strategies further below.

## Outcome by Outcome Feedback

**National Outcome 1** – The nature, prevalence, and incidence of racism in Australia is understood.

### Strategies

- (1) Measure cultural diversity within employment and leadership of media, parliaments, Government, law enforcement, various regulators, law journals, and the judiciary. See recommendation under Outcome 2: Legal Frameworks. Data collection for media.
- (2) Expand Scanlon Foundation research (Markus 2020) to test the prevalence of dehumanising narratives and conspiracy theories about racial and religious minorities (Lentini 2019, Davey 2019, Lee 2017, Abdalla et al. 2021; Peucker et al. 2018). This will give us trends to compare and evaluate the impact of social media regulation (or lack thereof) over coming years.<sup>1</sup>
- (3) The monetisation of racism (ISD 2021): Who is funding racist activities in Australia, and how actors make money, including spreading [disinformation online that dehumanises](#) based on race or religious belief.

This should include social media companies, online hate groups, public commentators, and media outlets to candidates running in elections that reach the electoral minimum and receive AEC funding. This report could:

- a. be commissioned to be carried out by experts, subject to peer review and Race Discrimination Commissioner review using the AHRC inquiry powers,
- b. not name actors so to avoid amplifying their profile,
- c. name the financial benefits and how the money was made,
- d. provide data on which communities were targeted.

The standards established by section 9 and section 18C of the Racial Discrimination Act and relevant case law should be used to mediate disputes about whether an activity is racially discriminatory.

- (4) Consider a range of possible data sources: Police hate crime data; disaggregated reporting of feedback from court users on experiences of judicial bias; reporting of complaints about discrimination by police; ACMA; Australian Press Council; e-Safety;

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<sup>1</sup> Comparative examples from international jurisdictions

France: <https://rmx.news/france/france-poll-reveals-vast-majority-worried-about-great-replacement/>

Norway: <https://www.hlsenteret.no/aktuelt/publikasjoner/population%20survey%202017>

Similar studies have been done in the UK and US.

human rights bodies; community third party data collection mechanisms. Pull data together into one place each year and provide a breakdown of the targeted group identities.

**National Outcome 2** –Australia has an effective legal framework to protect people from racial discrimination and racial hatred.

### Strategies

#### **(1) Anti-Dehumanisation Standards for the Australian Government**

The Australian Government should take all reasonable steps to advance its obligations under the Rome Statute, which aims to prevent genocide. Under the external affairs power, Australia would be supported to pioneer world leading anti-dehumanisation standards for Government.<sup>2</sup>

Governments must have a legal obligation to apply reasonable adjustments to those policies or laws that cause dehumanisation of groups identified by protected attribute. Government, for whatever reason, can provide powerful 'proofs' to hateful narratives on a continuous and large-scale distribution basis (in terms of information distribution).

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<sup>2</sup> ICCPR Art 20(2) prohibition on advocacy of hatred.

Rome Statute Article 25(3)(e) – Individual Criminal Responsibility: In respect of the crime of genocide, directly and publicly incites others to commit genocide.

Australia – International Criminal Court Act 2002, aims to facilitate compliance with Australia's international obligations however does not affect Australia's right to exercise its jurisdiction. The Rome statute is merely addressed in the preamble of the act. The Act lists different obligations that it will 'abide' with if requested. For example, if the ICC request the surrender or arrest of persons.

The Federal Criminal Code Act 1995 contains section 80.2A (1)(c) - Urging violence against groups provides that:(1) A person (the first person) commits an offence if:(a) the first person intentionally urges another person, or a group, to use force or violence against a group (the targeted group); and(b) the first person does so intending that force or violence will occur; and(c) the targeted group is distinguished by race, religion, nationality, national or ethnic origin or political opinion; andd) the use of the force or violence would threaten the peace, order and good government of the Commonwealth.

This section was introduced by the National Security Legislation Amendment Act 2010 No. 127, 2010. The explanatory memorandum on this bill makes no reference to the Rome Statute or ICCPR or any international instruments.

This section has never been utilised as of 2020, confirmed in a Senate Question on Notice. A range of legal experts have deemed it to be unfit for purpose given the criminal evidentiary threshold and the two mens rea requirements.

NSW introduced s93Z to criminalise incitement to violence on similar grounds, but that has also not been used to date. Imminence of harm and specificity of the incitement seem to be major hurdles, as well as securing evidence of intent.

Incitement to violence is not only very hard to prosecute but is operating at too high a threshold for preventing genocidal violence. Incitement to genocide is done through dangerous speech, including dehumanisation: Maynard JL, Benesch S (2016) Dangerous speech and dangerous ideology: an integrated model for monitoring and prevention. *Genocide Stud Prev* 9(3):70

While existing discrimination laws provide some protection<sup>3</sup>, this submission argues that analogously to the Disability Standards for Education providers, a standard in relation to dehumanisation will assist the Australian Government and Government Ministers in understanding their positive obligations.

The following proposals help prevent genocide, atrocity, and hate crime caused by law or policy, regardless of their intent.

Mainstreamed dehumanisation creates a heightened environment for racism and genocidal violence (Maynard and Benesch 2016). Given that the Christchurch terrorist is an Australian, Australia has a moral obligation to put safeguards against official laws and policies contributing to public hatred against certain minorities and, therefore, to extremist movements – whether they intend to or not.

Qualities of dehumanisation include essentialising the subject group to appear interchangeable and as if they have no human depth, warmth, or independent will ('mechanically inhuman') or to portray them as less than human ('subhuman') (Haslam 2006; Maynard and Benesch (2016).

Laws and policies can materially contribute to harm if they dehumanise a minority religious or racial group or a group defined by asylum seeker status and simultaneously construct them as a threat to Australians. This submission provides the following definitional threshold, building on definitions of dehumanising discourse (Risius et al. 2021):

*A law or policy materially contributes to dehumanisation if, based on that law or policy, information is serially and substantially curated to Australian audiences to portray a class of persons as*

*(i) polluting, despoiling, or debilitating society;*

*(ii) having a diminished capacity for human warmth and feeling or independent thought and having threatening intent;*

*(iii) acting in concert to cause mortal harm;*

*(iv) being held responsible for and deserving of collective punishment for the specific crimes, or alleged crimes of some of their "members"; or*

*(v) to be easily subject to cruel or brutal treatment; and*

*The class of persons is identified based on a protected attribute (e.g., race, ethnicity, national or ethnic origin, religion, or asylum seeker status).*

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<sup>3</sup> With the exception of religious discrimination which is yet to be established at the federal level

If Government can avoid the law or policy having this effect by making reasonable changes to the law or policy, it should be compelled to apply those changes.

So for example, the inclusion of 'religious cause' in the terrorism definition has potentially fueled white nationalist 'great replacement' theories about Muslims, theories which profoundly essentialise and dehumanise Muslims as a group. The law has done this by supporting the large-scale distribution of stories to perpetuate the idea that Islamic religiosity causes terrorism and depravity. It was easily avoided by instead focusing the law on ideological cause for all terrorism groups, but for political reasons, it was maintained and continues to be maintained. The Christchurch massacre was the price. Tarrant referred to Muslim children as the young vipers in a nest to be eradicated for white and western civilisation to survive.

In addition to Anti-dehumanisation Standards for the Australian Government, this submission recommends a parliamentary inquiry referral pathway be established for any government law or policy causing dehumanisation, following the above definition.

## **(2) Close the legal protection gap for religious discrimination and vilification at the federal level**

AMAN has supported individuals who have experienced discrimination and witnessed firsthand the permanent injuries. The trauma of experiencing discrimination in a place where you are meant to be and feel safe, such as work, is profound and, sadly, is often experienced by people with underlying and layered vulnerabilities: refugees with historical trauma resulting from war, torture, military occupation; women; and low paid/insecure workers. Muslim women should wear the hijab without fear of intimidation, violence, hostility, or discrimination (Iner, 2019). Australian Muslims should be able to use their Muslim names without fear of never being hired, of being watched by police, and losing their equal status in society (Cherney and Murphy, Akbarzadeh 2021). The fact that religious **discrimination** is not covered at the federal level or in NSW and that religious **vilification** is not covered at the federal level, and several states are an egregious gap. Coupled with Australia's terrorism laws framing of Islam and the Muslim community, it sends a very dangerous signal to society. (AMAN, Submission on the Religious Discrimination Bill)

## **(3) Statutory duty of care on platforms**

Impose a statutory duty of care on platforms to uphold Australia's standards on vilification and discrimination enforced by e-Safety, or the AHRC. Digital platforms will only resource compliance units if they think there are consequences for not complying. (AMAN, Hansard Transcript, Inquiry into Social Media and Online Safety, 2021)

## **(4) Dehumanisation of group identities online**

The federal Online Safety Act currently does not deal with hatred enacted against group identities based on race religion. It focuses on instances of bullying or abuse on individuals. It needs to act further upstream to where racism and dehumanisation are

cultivated by bad actors, and therefore reduce the incidence of bullying or abuse. Vilification laws are not enough to fight against dehumanising disinformation. Introduce civil penalties for bad actors online who serially publish dehumanising speech or discourse (through disinformation) against groups based on their race or religion. Those civil penalties should be enforced by the e-Safety Commissioner to take the pressure off victim communities. (AMAN, Submission to Inquiry into Social Media and Online Safety; and Hansard Transcript, 2021)

#### **(5) Remove exemption for law enforcement from religious discrimination bill**

Remove section 37(2) of the proposed Religious Discrimination Bill that allows direct discrimination by law enforcement under the guise of national security. If the Australian Government is sincere about its promise to enforce counterterrorism laws in a non-discriminatory and ideology-neutral way, it should not be necessary to directly discriminate based on a person's religious belief or activity. Evidence of threat to security is the appropriate basis. This clause sends the opposite signal to what is required given the prevalence of racial profiling and discriminatory attitudes within law enforcement. (AMAN, Submission on the Religious Discrimination Bill; Hansard Transcript Senate Committee on Legal and Constitutional Affairs, January 2022)

#### **(6) Remove elements of counterterrorism law that perpetuate racism**

*'Religious cause' as a motive element in terrorism*

Terrorism in Australia by law must have a religious, ideological or political cause.

Criminal laws must serve a clear purpose, be straightforward to apply, not give rise to substantive discrimination or be counterproductive to the public interest. Unfortunately, 'Religious cause' in the terrorist definition does not meet those criteria. The following run down is very brief, but can be provided in greater detail.

The purpose of religious cause is unclear. The law specifies religious cause as a motive but not other subtypes of ideological cause self-named by actors. For example, some actors would refer to themselves as patriots (Galea case). Authorities do not endorse or accept this categorisation, nor does the law include 'patriotic cause.' If 'religious cause' were removed at law, all terrorism cases would be judged under the same general test of an ideological or political cause. Evidence of watching violent ISIL videos speaking in support of ISIL can be captured under ideological or political cause.

Religious cause is not straightforward to apply by judicial officers. In some cases, judges have personally interpreted the Quran, and invited extremism experts to interpret the Quran (rather than Islamic scholars) to establish Islam as a cause of terrorism, rather than merely relying upon the Crown's ISIL related evidence. Judges have had to grapple with complex interrelationships between religious and extremist concepts and schema to make judgments about the defendant's prospects of rehabilitation and the seriousness of intent in terrorism conspiracy. There have been complaints of judicial cognitive and social bias. Government-appointed experts have warned that considering the defendant's religion and religious evidence can 'inflate the impact' of the defendant's actions, making it easier to prosecute

than non-religious cases.<sup>4</sup> Removing religious change would enable comparisons of judges' reasoning across offending contexts by ensuring similar evidentiary bars for demonstrating ideological radicalisation.

Religious cause leads to substantive discrimination. It would also encourage judges, authorities, and the media to precisely identify violent ideologies or conspiratorial beliefs (not simply 'advancing Islam'). The conclusion that flows from this logic is that the Muslim community must repudiate parts of the Quran to stop terrorism (as espoused in Justice Fagan's commentary, Prime Ministerial commentary historically).

Religious clause is counterproductive to the public interest. The narrative that Islamic religiosity leads to terrorism has contributed to the strength of white nationalist movements.<sup>5</sup> Research has found "the predominant actor on Australia's radical right extremist scene has been anti-Islam protest movements,"<sup>6</sup> fuelled by mainstream media coverage of charges and convictions. Public discourse flowed from the legal label,<sup>7</sup> with 'Radical Islam' or 'Islamic terror' becoming mainstream terms.

The main rebuttal we encounter is that we are trying to downplay the role of religion. From an academic or policy perspective, it might be valuable to discuss religious instruction, movements, and texts and how they are used in violent or extremist contexts. However, criminal laws serve a different purpose and are measured by other criteria.

#### *Prosecutions for terrorism conspiracy*

We believe there have been systemic failures at the prosecution level to treat all terrorism conspiracy equally. For many years the Muslim community has perceived law enforcement to be politicised by the Global War on Terror and to carry in-group bias. The most significant barrier to those threats being investigated and prosecuted as terrorism has been the lack of terrorist organisations of that nature being listed.

Australia's terrorist list only included self-declared Islamist terrorist organisations for many years. This has made terrorism conspiracy cases motivated by 'religious cause,' where the defendant is Muslim, more straightforward to prosecute.

A limited review of case law reports nationwide indicates that non-Muslim individuals have conspired towards acts of terrorism. Still, they have consistently been convicted under more minor (non-terrorism) charges. Moving counterterrorism to a truly ideology-neutral space using a consistent approach to labelling will assist with cultural change needed in law enforcement in the longer term.

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<sup>4</sup> Victorian Government, Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers (Report No 2, 2017) p 66.

<sup>5</sup> Mario Peucker, Debra Smith and Muhammad Iqbal, 'Mapping Networks and Narratives of Far- Right Movements in Victoria' (Research Report, Institute for Sustainable Industries and Liveable Cities and Victoria University 2018).

<sup>6</sup> William Allchorn, 'Australian Radical Right Narratives and Counter Narratives in an Age of Terrorism (Final Report, Hedayah and Centre for the Analysis of the Radical Right, 2021) 8.

<sup>7</sup> Kieran Hardy, 'Hijacking Public Discourse: Religious Motive in the Australian Definition of the Terrorist Act', (2011) 34(1) *UNSW Law Journal* 333.

We are also seeking the Australian Government to implement the IGIS recommendations concerning the prosecution of children in terrorism.

### *Safeguards for policing*

The use of diversionary methods for minors appears to be more common now. Undercover operations with teenagers raise significant ethical and justice concerns. These policing tactics appear to be driven by imperatives to demonstrate value for the Commonwealth's investment in counterterrorism policing by securing prosecutions. Some queries that flow from this include:

- How does the Australian Government incentivise the AFP to engage with diversion and deradicalization, especially for young people?
- How does the Australian Government ensure that Muslim youth with a history of trauma, mental illness, disability are not overpoliced?
- How much of the Australian Government's counterterrorism response rely on the police to be the connector and referral entry point, given that model has the potential to stigmatise the pathway to social services?

We are very interested in the Victoria University- Victoria Police joint research into precise behavioural indicators of transition to violence. We query whether more research partnerships may assist in ensuring internal reflection on policing that may inadvertently escalate violence by cornering and isolating youth and then fundamentally 'changing the stakes.' Mainly where there are underlying vulnerabilities (mental health).

We also ask that consistent thresholds for declaring a 'terror event' be used by police across Australia. We have proposed a specific threshold in our engagements with QPS.

### **(7) Implement the recommendations of the Inquiry into Media Diversity in Australia**

The Senate Environment and Communications References committee recommended that the Commonwealth initiate a judicial inquiry, with the powers of a royal commission, to determine whether the existing media regulation system is fit-for-purpose and investigate the concentration of media ownership in Australia. The committee believes that media convergence due to technological change has greatly strengthened the argument favoring a single regulator across all platforms. Consequently, the committee further recommends that the judicial inquiry's terms of reference include consideration of a single, independent media regulator to harmonise news media standards and oversee an effective process for remedying complaints.

The Parliament's responsibility is to ensure that the nation's news media are sufficiently diverse, in ownership and in opinion, to maintain a vigorous democracy. To that end, the Committee made a range of more specific recommendations to support media diversity and public interest journalism, which we support and are essential to promoting racial equality and diversity of stories and perspectives (Committee Report 2021).

## **(8) Legislate for ACMA to collect and monitor workforce diversity data from the media industry**

Currently, there is no way to track workforce diversity, as no such data exists. MDA's report "Who Get's to Tell Australian Stories?" is the closest study we have to benchmark the media industry. This is partly because the ABS does not collect comprehensive data on cultural diversity, creating a spillover effect on collecting this specific data set. It is helpful, in this instance, to look abroad to see how data is being collected. Ofcom is the UK's regulatory body responsible for broadcasting and telecommunications. Ofcom's statutory duties include monitoring broadcasters' workforces and equal opportunity arrangements. Employee data is collected, including sex, race, and disability, on a mandatory basis. In doing this, they can hold the industry to account for the make-up of its workforce.

We recommend that there be consideration of legislation that would empower an appropriate body, such as the Australian Communications and Media Authority (ACMA), to collect and monitor this data (Media Diversity Australia, Submission to Inquiry, 2021)

## **(9) Immediately close gaps in our media regulatory framework for online content**

The following is drawn from recent representations to ACMA by AMAN about the gap in regulation concerning Sky News.

Under section 125 of the Broadcasting Service Act, ACMA can develop or strengthen program standards applicable to news networks that use free-to-air broadcasting or subscription-based broadcasting and include their online material. The necessary standards should

- Require the broadcasting service to publicly inform audiences which Codes of Practice it is governed by.
- Require a straightforward complaints process, including online correspondence options.
- Require the development of Australian-based Editorial Guidelines.
- Ensure broadcasting services monitor and moderate the comments of content they post to their social media accounts and provide straightforward online processes for consumer complaints about their comment threads.
- Qualify that the existing allowance for current affairs to adopt a stance cannot be used to justify approaches that diminish the Objects of the BSA Act, especially their duty to develop and reflect a sense of Australian identity, character, and cultural diversity.
- Clarify that impartiality does not require that every perspective receives equal time, nor that every facet of every argument is presented. However, the broadcasting service aims to present, over time, content that addresses a broad range of subjects from a diversity of perspectives reflecting a diversity of experiences, presented in a diversity of ways from a diversity of sources. The substantive requirements under the code are to gather news and information with due impartiality and present a diversity of perspectives so that, over time, no significant strand of thought or belief within the community is knowingly excluded or disproportionately represented. Exceptions to the above should be made for content that

- vilifies or perpetuates hatred about groups based on protected characteristics (as per the Act);
- purposely and/or maliciously misleads by spreading inaccurate information (in terms of its content and context).
- require broadcasting services to cooperate with ACMA to provide the information needed to evaluate their service against the Code of Practice.

This request is supported by the following reasons.

- The respondent is not providing the necessary means to address complaints about their services, which is outlined as a good standard in section 123 of the Act.
- The respondent's conduct, as detailed in our complaint, included breaches of clauses 3.3 (accuracy and fairness), impartiality (3.4), and vilification (2.6.2) of the Commercial Television Code of Practice. Unfortunately, we were not certain which Code governed the respondent as the content was online. Thus, our original complaint does not refer to these clauses. Their actions and handling of this complaint do not respect *community standards* or *respond to audience needs*. The evidence in our complaint also demonstrates that the respondent is not *responsive to the need to provide fair and accurate coverage of matters of public interest* and is not *developing and reflecting a sense of Australian identity, character, and cultural diversity*. Neither Code of Practice serves these specific objects in their current form.
- Citing clause 3.4.3, the respondent openly defends their right to have a stance on Islam that does not include views from mainstream Islamic scholars. Their approach denies Australian Muslims a platform to explain our understanding of our faith and to show our community's diversity and humanity. The respondent's approach 'others' us as a group within Australia and the West. Essentialising Muslims is a process by which Muslims are grouped together and not afforded the human faculties of warmth, independent thought, or free will. We are effectively placed in a category that does not have human qualities, removing moral barriers that a person may feel to enacting hatred and violence towards our community. The history of dehumanisation as a precursor to genocide and mass atrocities is well documented.
- The willingness of the respondent to conflate extremist discourse with Islam, thereby misleading their viewers, is a cause of deep concern. It erodes our community's safety and wellbeing while also fuelling far-right movements.
- It is also very disappointing that the respondent has not responded with some remedial effort to provide Australian Muslims with the opportunity to provide perspectives on their platform.
- The respondent states that they only moderate comments on their social media accounts (even if they breach vilification laws) if a person complains about those comments. This

echoes a public statement made in May 2021.<sup>8</sup> The failure to monitor or moderate their social media pages breaches their responsibilities, as provided in *Fairfax Media Publications Pty Ltd v Voller* [2021] HCA 27. Their responsibilities are further compromised by their obscure process for making complaints about their comment threads. This shows the respondent is not *responsive to audience needs* or *respecting community standards* as per the Act's Objects.

- Sky News' UK-based editorial guidelines do not meet Australian community standards. In particular, there is no guideline concerning
  - Avoiding the unjustified use of stereotypes or discriminatory content that could reasonably be interpreted as condoning or encouraging prejudice.<sup>9</sup>
  - Reporting on Hate speech<sup>10</sup>
  - Reporting on terrorism<sup>11</sup>
- Moreover, Sky News UK has attracted criticism from UK-based researchers and civil society for stoking hate and xenophobia.<sup>12</sup>
- The respondent has a staggering market share and ability to influence Australian audiences and society, delivering:

*its second consecutive year at the top of Foxtel's ratings, and has increased its lead as the most-engaging Australian TV news page on social media with 1.3 billion online video views.' Sky News is Australia's unrivalled 24-hour multi-platform news service provider available on Foxtel and free-to-air regional channel Sky News Regional. Sky News also operates a national digital network reaching millions of Australians each month across digital platforms, including SkyNews.com.au, YouTube, Facebook, and News Corp Australia websites. Recent research conducted by Hoop Group on Sky News Australia's audience found that the network is now reaching more than one-third of the Australian population, or nine million unique Australians, each month across its platforms.<sup>13</sup>*

**National Outcome 3 – All Australian Governments commit to eradicating racism and racial discrimination through their actions.**

### Strategies

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<sup>8</sup> 'A spokeswoman for Sky News told Guardian Australia the channel was not responsible for the publication of the comments': <https://www.theguardian.com/media/2021/may/27/thousands-of-youtube-comments-on-sky-news-australia-video-celebrate-blm-activist-being-shot-in-head>

<sup>9</sup> See for example, ABC and SBS Editorial Guidelines, which give effect to section 123(3)(e).

<sup>10</sup> See for example, [Hate Speech, Terrorism & Mass Killings – ABC Editorial Policies](#)

<sup>11</sup> As above.

<sup>12</sup> <https://stopfundinghate.info/about-the-campaign/media-and-hate-crime/>

<sup>13</sup> <https://www.skynews.com.au/business/media/sky-news-australia-reaches-new-audience-records-in-2021/news-story/63fcee57985511401c91b25086cd1c1f>

- (1) Political leaders across the divide unite to enact a Uluru Statement of the Heart process that leads to truth-telling, treaty, constitutional recognition, and voice.
- (2) Australian Governments agree to interoperable definitions of hate crime. Australian states and territories need to have practicable and effective hate crime laws. AMAN has put forward a series of recommendations to the Queensland Government in the context of Parliamentary Inquiry into Serious Vilification and Hate Crime. That Committee has adopted a number of recommendations in its report, published 31 January 2022.
- (3) Australian governments and political parties acknowledge the harm of [dehumanising speech and discourse](#), given its historical connection to atrocities and genocide. Making it a cornerstone of their approach to addressing those who seek to violently deny cultural diversity.
- (4) Australian Governments must commit to taking reasonable steps to prevent dehumanisation – and the heightened environment for racism - caused by laws and policies. See recommendation earlier under National Outcome 2.
- (5) Australia only decides to enter a war with a motion passed by Parliament, given the trauma inflicted on foreign civilian populations, refugees, returned soldiers, and the ensuing scope for dehumanisation and 'othering' of populations who then seek asylum.
- (6) Australia is consistent with its foreign policy pronouncements in line with international humanitarian and human rights law, upholding the dignity of diaspora communities living in Australia and promoting social justice and cohesion.
- (7) Australia implements IGIS recommendations about protecting children's rights in connection to terrorism offences. Australian Governments move away from securitised approaches to 'countering violent extremism' and apply diversionary methods equally to youth of all cultural and religious backgrounds.

**National Outcome 4** – There is broad-based community understanding of racism and racial discrimination and how to counter it.

#### Strategies

- (1) Political parties change their governing documents to define [dehumanisation](#) and require candidates and elected representatives not to publish or promote it.
- (2) Teach school children about the role of dehumanisation in historical atrocities and how to spot discourse that may be trying to scapegoat a minority group.
- (3) Offer this education to law enforcement, the media industry, media regulators, social media companies based in Australia, social media regulators, the advertising industry, elected representatives, and their staff.

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