

Senate Standing Committees on Legal and Constitutional Affairs
Religious Discrimination Bill 2021 and related bills

Submission made by the [Australian Muslim Advocacy Network](#)

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Parliament House
CANBERRA ACT 2600



AUSTRALIAN MUSLIM ADVOCACY NETWORK

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Submission on the Religious Discrimination Bill 2021 (and related Bills)

1. The Australian Muslim Advocacy Network (AMAN) is a law-based advocacy organisation that works to secure the physical and psychological safety of Australian Muslims. The organisation's directors can be found on its website.
2. We seek to create a safer and more inclusive Australia by safeguarding Australian Muslims' equal rights and protections. We are a civil society organisation that researches and monitors online discourse, research, and dialogues on policy.
3. We have engaged directly with platforms and industry bodies, including through 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 practiced in the field of applying existing vilification laws to online hate speech.
4. This submission contains suggested amendments to the Bill.

Acknowledgement of Country

5. AMAN acknowledges the Traditional Owners of country throughout Australia and recognise their continuing connection to land, waters and culture. We recognise that many of the issues Muslims face from police and the legal system, from mainstream

media, politics, researchers and online, were first and continue to be experienced by First Nations Peoples.

RELEVANT INTERNATIONAL LAW

6. Our submission refers to the following human rights in the International Covenant on Civil and Political Rights, to which Australia is a signatory.

- a. Article 18 provides the right to freedom of thought, conscience, religion, or belief.
- b. Article 20 prohibits advocacy of religious hatred that constitutes incitement to discrimination, hostility, or violence.
- c. Article 2 of the ICCPR provides each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion...
- d. Article 26 of the ICCPR provides, "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law."

7. Our submission also refers to Article 5 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) provides:

States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of... (vii) The right to freedom of thought, conscience, and religion.

8. The Australian Government must take ‘necessary steps... to adopt such laws or other measures as may be necessary to give effect to the rights recognised under the ICCPR (Article 2).
9. Enacting a Religious Discrimination Bill is necessary to fulfill Australia’s obligations under the ICCPR. Our submission will concentrate on outstanding matters of concern.

PROTECTION FROM VILIFICATION AND HATE CAMPAIGNS

10. Our submission requests a shield against vilification for people who are targeted because of their religious beliefs or activity. People of faith must not vilify others as per section 12 of the Bill, and this protection must extend both ways. When introducing the Bill, the Prime Minister spoke effusively about providing a shield to people of faith. No greater security is needed now than protection from campaigns that maliciously endanger our families and places of worship.
11. The Prime Minister referred to the trolling of people of faith online. A vilification protection will provide added protection.
12. We refer to the significant bodies of evidence supporting the need for vilification protections in earlier submissions on the Religious Discrimination Exposure Drafts. Please refer [here](#) and [here](#).
13. In addition to that body of evidence, this submission draws your attention to more reports including
 - a. The Centre for the Analysis of the Radical Right and Hedaya Institute report (2021) into violent extremist activity in Australia, which found anti-Islam movements to be ‘the predominant force’ in building Australia’s neo-Nazi and white nationalist extremism.

- b. The Australian Human Rights Commission Report, *Sharing the stories of Australian Muslims* (2021) found 79% of Australian Muslims surveyed were afraid for their community following the Christchurch attack; almost 80% had experienced unfavourable treatment on the basis of religion, race and ethnicity; and 23% felt unable to speak up when they or someone they knew experienced unfavourable treatment. Further it found:

The National Survey data gave a sense of the discrimination and harassment that Australian Muslims face when they enter public spaces. National Survey participants reported feeling the most unsafe on public transport, in shopping centres, and in public spaces such as on the street. The most common situations in which National Survey respondents experienced unfavourable treatment were when dealing with law enforcement (50%), in the workplace or when seeking employment (48%), at a shop or restaurant (43%) or when they go online (43%). The situations in which Australian Muslims experienced the most unfavourable treatment were also the situations in which this treatment occurred most often. The National Survey found that unfavourable treatment due to religion most *frequently* occurred online. This is likely due to the ease in which perpetrators can harass victims through fake profiles or pseudonyms coupled with the lack of regulation that exists online, allowing perpetrators to evade traditional laws.

- c. Referring to the Australian terrorist who carried out the Christchurch attack, Lentini (2019, 43) explains that,

Tarrant's solution to the crisis – indeed one on which he felt compelled to enact – was to annihilate his enemies (read Muslim migrants). This included targeting non-combatants. In one point in his 'manifesto,' he indicates that they constitute a much greater threat to the future of Western societies than terrorists and combatants. Thus, he argues that it is also necessary to kill children to ensure that the enemy line will not continue...Tarrant indicated that, when trying to remove a nest of snakes, the young ones had to be eradicated. Regrettably, children were among those whom he allegedly shot and killed.

- d. Anders Breivik, the Oslo terrorist who murdered 77 people in 2011, was inspired by a similar Anti-Islam demographic invasion narrative. The links between these two attacks in ideology and other aspects are considered in the literature. On dehumanisation, Kaldor (2021) notes,

Breivik also refers to Muslims as “wild animals,” who he argues are freely bringing about European “genocide” because “traitors... allowed these animals to enter our lands, and continue to facilitate them.” In keeping with the naturalistic theme, Tarrant’s text is also rife with mixed metaphors describing how individuals such as himself can no longer escape Western civilisation’s contamination: “there is no sheltered meadow... there is not a single place left where the tendrils of replacement migration have not touched.” Comparing immigrants to a “vipers [sic] nest,” he implores followers to “burn the nest and kill the vipers, no matter their age.” Crusius similarly bewails how those without the means to “repel the millions of invaders” “have no choice but to sit by and watch their countries burn.” The repetition of animalistic metaphors is no accident: the perpetrators intentionally dehumanise immigrants by depicting them as beastly, thereby making their complaint about Western society’s perceived decline more justifiable to their readers.

- e. A Victoria University study in 2018, the year before the Christchurch attack, found that the narratives expounded by Tarrant were prevalent on Facebook (Peucker, Smith and Iqbal, 2018).
- f. In June 2019, the Facebook page shared a poster with a picture of a white family with two children and a Muslim family with 4 wives and 12 children. It had the same title as Tarrant’s manifesto: “The Great Replacement”. The meme was accompanied by similar derogatory statements implying that Muslims plan to conquer countries like Australia through higher fertility rates. The intense reactions to this poster were revealed in the extensive comments, with a significantly high proportion employing explicit dehumanising language, as well as expressions of wanting to kill or see Muslims dead. Responses included:

‘Shoot the ____’, ‘Islam is a cancer on global society for which there is no cure’, ‘You import the 3rd world you become the 3rd world. And when they become the majority then what next? They won’t have whitey to leech off. Just like locusts, infest & strip everything until there is nothing left’, ‘Deport the PEDO crap’, ‘They breed like rats’, ‘Drown em at birth’, ‘Fun those scumbags.muslims....reminds me of aids’, ‘Society should start culling the Muslims’, ‘I think I now understand why during the serbian / croat the serbs culled the women’, ‘I’m going out tonight to do as much as i can to solve this problem’.

14. Anti-Muslim dehumanisation is carried out by bad actors to large audiences on Facebook, Twitter and other social media companies (Abdalla, Ally, Jabri-Markwell 2021).
15. The current Bill importantly addresses religious discrimination, but it does not address vilification (incitement of hatred) towards people of faith.
16. Australian protections can be strengthened in different ways.

Introducing vilification protection into the Religious Discrimination Bill

Amendment A:

17. After section 12 of the **Religious Discrimination Bill 2021**, insert a section 12A that prohibits vilification of persons based on their religious belief or activity. Proposed wording for such an amendment was included in the [Joint submission](#) on the first exposure draft.
18. As protected under state and territory laws, incitement to hatred operates at a higher threshold to section 18C of the Racial Discrimination Act. Some state and territory acts include vilification on the grounds of a person's religious belief or activity. However, that protection only exists in half the available jurisdictions within Australia and not at the federal level.
19. Federal vilification protection will protect all Australians based on religious belief and activity nationwide. It will also provide protection for complaints that might not clearly satisfy the criteria of section 18C of the Racial Discrimination Act. For example, where it cannot be demonstrated that the act was done to humiliate, offend, insult or intimate a person because of their race or ethnicity.

Clarifying Section 18C RDA

20. Section 18C(1) (a) and (b) of the Racial Discrimination Act 1975 (Cth) (“RDA”) could be read together to include complaints from Muslims. However, it appears the Australian Human Rights Commission may not accept section 18C complaints if the relevant ‘public act’ was directed at a religious identity or group. This position is at odds with the legislative intent of the RDA and must be clarified.
21. It is already established in case law that if the act was done for two or more reasons and one of the reasons is race of a person (whether or not this is the dominant or substantial reason), then the act is held to be done because of the person’s race: (Toben v Jones (2003) 129 FCR 515, [63]-[64] (Kiefel J); Eatock v Bolt (2011) 197 FCR 261, [322]-[325]).
22. Section 18C focuses on the effect on a group. Muslims who are vilified for being Muslim should be able to lodge a complaint under section 18C. Obstructing those complaints is a substantive violation of Article 5 of CERD (detailed in paragraph 4 above). People from various ethnic communities experience humiliation and intimidation through hate campaigns that target, racialize and dehumanise them on account of their faith.
23. For example, an Afghan woman can be vilified, but the main reason she is likely to be identified is her ethnic appearance and her veil. Veiszadeh (2021) writes if someone said to me, ‘You f**king Afghan Terrorist,’ I could get some legal protection afforded to me, but if they leave out the word “Afghan,” then I might not.’ If the victim was called a “Muslim Terrorist,” there is a good chance the AHRC might not accept the complaint.
24. The Australian Parliament should remedy this uncertainty now through the following amendment.

Amendment B:

Amend the associated Bill as part of the package before Parliament, the **Human Rights Legislation Amendment Bill 2021**, by clarifying that section 18C (1) of the RDA does not exclude complaints from persons of faith targeted because of their **religious belief or activity**, which otherwise meet the criteria under section 18C(1).

The rationale for this amendment is that acts likely to offend, insult, humiliate or intimidate a person or persons because of their race, colour, national or ethnic origin may refer only to the persons' religion. In such circumstances, the person should not be denied justice or equality before the law. It is well established that racism can be based on cultural and racial superiority notions. Certain religious communities can be powerfully and negatively *racialised* to achieve political, radical, and extremist aims.

This submission also recommends that such an amendment clarifies that s18C (1) of the RDA does not exclude complaints from persons targeted because of their **asylum seeker or immigrant status**, which otherwise meet the criteria under section 18C(1).

SECTION 37(2) - EXEMPTIONS FOR NATIONAL SECURITY FUNCTIONS

25. Section 37 of the Religious Discrimination Bill relates to conduct 'in direct compliance with certain legislation etc.' It says that acts done to comply with Commonwealth and State laws cannot be religious discrimination. However, it goes further to excise 'performing a function or exercising a power relating to law enforcement, national security or intelligence' (s37(2)) from the ambit of the legislation.
26. Disturbingly, this clause enables those agencies to directly discriminate against communities or individuals based on their religious belief or activity, where it is 'reasonably necessary.'

27. This clause extends the current discriminatory legal framework created by terrorism law. Australia's terrorism definition includes a motive of religious, political, or ideological cause. This law leads to authorities and the media labelling the activities of ISIL and other overseas terror groups as religiously-motivated, even though their actions would be sufficiently and more appropriately covered under 'ideological' or 'political' cause.

28. AMAN submits that 'Religious cause' is not good law or public policy because:

- a. The focus on religious identity and practice rather than actions and specific political or ideological context (Frazer 2018; Hardy 2011) heightens the risk of law enforcement treating Muslims as guilty until proven innocent or as a 'suspect community.' Similarly, it creates confusion for judicial officers who struggle to distinguish between Islamic adherence and violent ideology.
- b. It propagates the lie that Islamic religiosity leads to terrorism, contributing to the strength of white nationalist violent extremist movements in Australia (CARR 2021).
- c. It has legitimised ISIL movements. This submission notes that authorities do not refer to white supremacists as 'patriotically motivated' or 'patriotic cause,' even though that is how they may refer to themselves.
- d. The public misunderstanding shaped by 'religious cause' (Hardy 2011) leads to numerous misguided community reports to the national security hotline, damaging social cohesion and belonging.
- e. Heavy-handed policing has had catastrophic consequences for some vulnerable Muslim children and teenagers, including those with no links to terrorism (Akbarzadeh 2021; AMWCHR 2021; AMAN 2021).

29. There is absolutely **no legal justification** for authorities to discriminate against communities or people based on their faith. Their work is to assess and prevent the risk of violence. The protections from discrimination in this Bill provide a much-needed

safeguard. Instead, this excision clause sends a **dangerous signal** to law enforcement that religious discrimination against Muslims will continue to be necessary.

30. The most common situations in which Australian Muslims experienced unfavourable treatment included when dealing with law enforcement (50%) (AHRC, 2021).
31. This legislation imposes a heavy burden on Muslim communities who are already marginalised and feel highly vulnerable (**see Annexure A**). It significantly increases the costs of bringing discrimination complaints against law enforcement. It sets a dangerous precedent that must not be replicated elsewhere in Australia.
32. This excision violates International law-making principles to only impinge upon fundamental freedoms in precise, well-justified, and well-defined ways.
33. Indirect discrimination complaints are already tempered by a reasonableness defence. This clause extends the reasonableness defence to direct discrimination, which has no precedent in other anti-discrimination legislation.
34. In November 2021, AMAN submitted a complaint to IGIS against ASIO Director-General Mike Burgess for his prejudicial public comments on the case of Mr. Raghe Abdi. We allege his remarks in the Annual Threat Assessment and before Parliament indirectly discriminated against the Muslim community by imposing a term that this community cannot comply with without experiencing significant disadvantage. While this particular complaint would not be affected by this Bill, it is highlighted in this submission to demonstrate that discrimination within security agencies and law enforcement is a live issue.
35. The remaining clauses concerning Commonwealth and State laws provide enough protection for law enforcement and security officials when complying with legislation. Subsections 37(1) and (3) mirror clauses in other anti-discrimination acts.

36. The Australian Muslim community may also be very concerned by the **National Security Legislation Amendment (Comprehensive Review and Other Measures No.1) Bill 2021** currently before parliament that expands national security powers from investigating individuals to a ‘class of persons’ without defining a class of persons. When read together with section 37(2) of the Religious Discrimination Bill 2021, our community can be rightly concerned about the erosion of safeguards to protect our equality before the law and human rights.

Amendment C

37. This submission requests the Australian Government and Australian Parliament to **remove section 37(2)** of the Religious Discrimination Bill.

HUMAN RIGHTS PERSPECTIVE ON SECTION 12 – STATEMENT OF BELIEF

38. We preface our comments by stating that AMAN is a member of the coalition working towards a Federal Charter of Human Rights. Such a charter would hold up all freedoms and avoid any sense that certain groups are being afforded special dispensation over others. In addition, we also support the idea of consolidating anti-discrimination laws at the national level.

39. The Bill provides that a Statement of belief does not in and of itself constitute discrimination.

40. This clause expressly overrides the operation of state and territory discrimination laws and Commonwealth discrimination laws.

41. The Australian Government provides that this clause seeks to remedy the risk of people of faith being subject to a complaint process, even when a tribunal may eventually find in their favour by applying religious freedom-based exceptions to vilification or defences to indirect discrimination (reasonableness).

42. Indeed, mechanisms for resolving disagreement should not in themselves pose such an onerous burden on any protected segment in society as to create a chilling effect that will nullify or impair fundamental freedoms or protections.
43. We note that section 7 of the Bill, paired with section 38(3) of the Sex Discrimination Act, provides extensive coverage for religious schools to state their beliefs and develop upfront policies. Supporting the right of parents to choose a school that conforms to their religious and moral convictions fulfils section 18(4) of the International Covenant on Civil and Political Rights. Having statements of belief upfront and publicly available gives parents and students more informed choices about the school community they want to be part of.
44. AMAN notes the legal complexity and overriding of discrimination laws under section 12. In particular,
- a. Statements of Belief cannot include vilification. However, the Bill uses a definition for vilification set by the Australian Government, not the state and territory legislation definitions.
 - b. The threshold in the Australian Government definition of vilification (inciting hatred and violence) is higher than that of state and territory legislation (severe contempt, severe ridicule) and the RDA (offensive and humiliating).
 - c. Our understanding is that a complainant will need to clear the hurdle of the Commonwealth threshold in a federal court before proceeding with a discrimination complaint in their state tribunal, increasing costs and complexity. For example, an employer discriminates against an employee, and as part of that pattern of behaviour is making statements of belief. The whole matter will be paused and elevated to a federal court to resolve that element first. It may be legally

more harmonious and coherent for the vilification standard to be set by the home legislation in which the complaint originates.

- d. To reduce the complexity, some state and territory governments may legislate to lift their thresholds for vilification to match the Commonwealth standard. This could water down and reduce protections over time.
- e. The excision sets a precedent for other areas. As a principle, the suspension of human rights protections that ostensibly affect one or more specific groups is socially corrosive. Consider the impacts of the Racial Discrimination Act suspension under the Howard Government to carry out the NT intervention. The suspension or excision of discrimination laws obstructs access to justice. It is generally to be avoided unless more precise solutions cannot be determined. AMAN notes the summary dismissal options currently available under existing discrimination frameworks and suggests that data on their use and beneficiary satisfaction rates would be very helpful to guide improvements in this area.

CONCLUSION

- 45. We are grateful for the opportunity to make this submission and, subject to the matters outlined above, commend the Bill in seeking to address a significant anomaly and absence of adequate and appropriate legislative protection against discrimination based on a person's religious belief and activity.
- 46. If the Parliamentary Joint Committee requires further information or has any questions, we would be pleased to address any request. Inquiries can be directed to Rita Jabri Markwell at advocacy@aman.net.au.

ANNEXURE A

In relation to the prevalence of religious discrimination by law enforcement and security bodies, we draw your attention to the following evidence:

In 2015, the Australian Law Reform Commission reported that many anti-terrorism laws restrict freedoms of religion, speech, movement, and association.

In 2017, the United Nations Committee on the Elimination of Racial Profiling raised concerns for the Australian Arab and Muslim population, noting that 'public anxiety about terrorism have heightened prejudice towards and discrimination against them.' The committee also highlighted Australia's discriminatory counter-terrorism measures and police practices while warning the Australian government about the risk of racial profiling' (Soutphommasane 2017).

In 2021, Australian Muslim respondents to a National Survey by the Australian Human Rights Commission reported the most common situations in which they experienced unfavourable treatment included when dealing with law enforcement (50%).

Despite the claim of neutrality, Australia's anti-terror laws are widely seen as targeting the Australian Muslim community. This has given rise to feelings of insecurity and unease amongst Australian Muslims towards the government and law enforcement agencies. This experience has been longstanding - a 2016 study revealed that complaints about over-surveillance were widespread (Cherney and Murphy 2016).

There are many anecdotes of unfair treatment by the police. These range from special attention at airport security checks to over-surveillance and ostensibly random checks, which seem to apply to those with Muslim appearance. Such experiences give the impression that the police are deliberately targeting Muslims. Added to this is the fact that many new recruits to the police force are unlikely to be aware of cultural and religious sensitivities and inadvertently cause offence (Akbarzadeh, 2021).

Akbarzadeh (2021) summarised the following concerns from the experiences of Australian Muslims of policing and surveillance:

Surveillance

There is a strong sense of concern over the amount of scrutiny faced collectively by Australian Muslims, with the whole Muslim community bearing the brunt of perceived 'guilt by association' with terrorism. There are concerns that community policing is now morphing into an intelligence-gathering strategy, with detrimental effects on community confidence in law enforcement agencies. The success of community policing rests on community trust and support for police counter-terrorism efforts.

The question of trust

Anti-terror tactics employed by the police against Muslims have contributed to the erosion of confidence in the police. Among these include 'stop and search' powers against Muslims, informal questioning of Muslims, and raids and searches of Muslims' houses. Anti-terror police raids remain a source of contention. Many respondents express that the way such raids are conducted is offensive and upsetting to Australian Muslims. For example, AMAN is aware of raids that have taken place on families where there is no apparent link with terrorism. Raiding police have taken pictures of family religious belongings such as prayer mats, Islamic calligraphy hanging on the walls, family photographs, and even recorded donations to local mosques and Islamic charities.

Undermining success of policing

Members of the Muslim community have stressed the importance of engaging with the community as a key factor to counter violent extremism. The success of community policing is often undermined by the police's focus on surveillance and intelligence

gathering rather than on genuine efforts to include Muslims in creating counter-terrorism strategies and policies.

The politicisation of police

Many Muslims are disillusioned with the way politicians and the media sensationalise terrorist attacks and imply a link between Islam and terrorism. This sensationalism is seen as fearmongering, often by politicians to advance 'their own agenda.' There is an overwhelming feeling that Australian public opinion of Muslims is skewered by sensationalism. Effective community policing facilitates two-way engagement between the police and the Muslim community and requires that the police are responsive to Muslim concerns and recommendations.

Valued as a citizen

The spike in anti-Muslim discourse following 9/11 has led to feelings of isolation within the Australian Muslim community. There are also sentiments that Muslims have to work significantly harder than non-Muslims for their voices to be heard. When it comes to counter-terrorism strategies, authorities did not take their opinions, concerns, and recommendations seriously.

Freedom of religious expression and freedom

Members of the Muslim community have discussed this in relation to voting in elections, which they claimed was their 'strongest power' in validating their opinions. However, there are overall feelings of being treated as 'second-class citizens.'

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