



AUSTRALIAN MUSLIM ADVOCACY NETWORK

15 September 2023

THE AUSTRALIAN GOVERNMENT REGARDING THE UNIVERSAL PERIODIC REVIEW (UPR)

SUBMISSIONS FROM THE AUSTRALIAN MUSLIM ADVOCACY NETWORK

1. INTRODUCTION

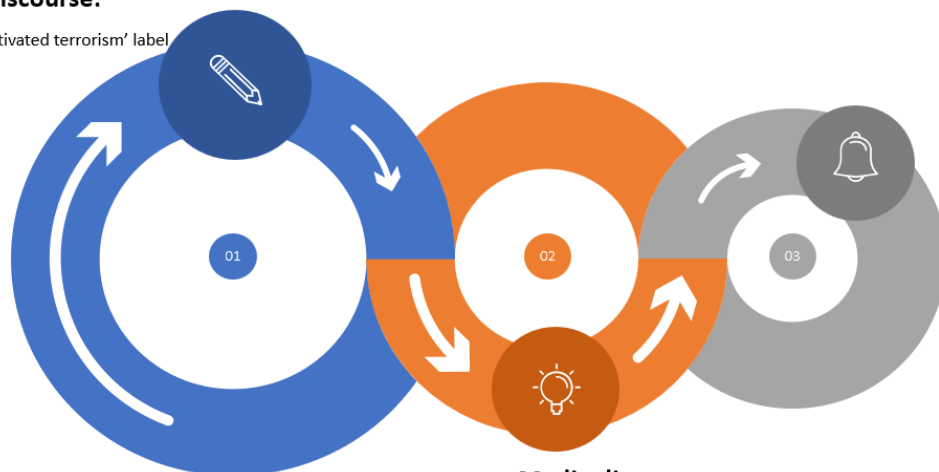
The Australian Muslim Advocacy Network Ltd (AMAN) works to prevent the harms of systemic racism, online hatred and Islamophobia through policy engagement and law reform. AMAN welcomes the opportunity to make submissions via the Attorney-General's Department into the third cycle of the Universal Periodic Review (UPR).

2. OVERVIEW

While we welcome the Albanese Government's commitment to introduce religious discrimination and vilification protections, we warn that the benefit of these laws will be significantly reduced by a failure to disrupt the engine of Islamophobia – which is the conflation of our religion and terrorism at all levels of government and law enforcement. An ongoing environment of anti-Muslim discrimination and vilification is fostered by the legal and official label of 'religiously motivated terrorism.'

Official discourse/ political discourse:

'religiously motivated terrorism' label



Media discourse:

'Islam is the problem/threat.'
Concentration of media connecting
Islam and terrorism

Online discourse:

Mainstreamed islamophobia.
ISIS and racist nationalist
communities bolstered by
steady flow of
media stories and
official language



Infringements on civil and political rights arising from counter-terrorism legislation remain a significant concern, particularly post-sentencing orders and recently proposed amendments to the framework, including new offences for accessing, possessing or transmitting violent extremist material that doesn't require terrorist intention; proposed IS flag ban and removal of sunset clauses on the proscription of organisations as "terrorist organisations" within the meaning of the Act. In addition, infringements on civil and political rights arise from the statutory conflation of the religion of Islam with terrorism through the use of the terms "global jihadist ideology" and "religious cause."

Despite the extensive human rights implications, counterterrorism laws continue to be introduced straight into parliament without any exposure draft. Most recent counterterrorism legislation is also not assessed by the Parliamentary Human Rights Committee. Terrorism sentencing and policing continue to have disproportionate and counterproductive effects, with double standards emerging regarding how Muslim and non-Muslim teenagers are treated. Muslim teenagers with mental illness or autism are at greater risk of a regime that allows minors to be sentenced as adults and minimises the consideration of mitigating factors. The scope for rehabilitation and diversion is given scant regard as the Australian Government continues to expand criminal options.

The delay in repatriating Australian women and children from Northeast Syria has damaged Australia's international human rights reputation.

Australia remains one of the few comparable democracies without a federal human rights charter.

Vilification and the advocacy of hatred continue to be treated as private harm. While we have laws in most states and territories to target religious vilification, these avenues are ineffective in targeting the scale of online hatred, racism and Islamophobia. Public regulators must be engaged with definitions of clearly vilifying material and impose financial penalties on serial actors and the platforms that enable them. The business model of inciting hatred based on a group's race and religion must be disrupted through proportionate penalties.

States cannot meet their obligations to prevent incitement to genocide under the Rome Statute and to prevent the advocacy of hatred under the International Covenant on Civil and Political Rights through vilification laws alone. Anti-dehumanisation standards that connect to parliamentary codes of conduct, media and online safety regulation must be introduced to treat racism as a public harm and provide a social atmosphere for citizens that supports their right to health and non-discrimination.

3. HUMAN RIGHTS CONCERNS

3.1 Remediating anti-Muslim racism and Islamophobia

Research suggests that Islamophobia and anti-Muslim sentiment are highly prevalent and cannot be remedied due to terrorism concern.¹ At the same time, terrorism concern levels are high due to the conflation of terrorism and Islam in the media and our law.

AMAN is focused on sustainable and long-term solutions to this problem that lift the burden off individual Muslims and the Muslim community to continually prove their humanity and educate the public that their religion does not support terrorism or other terrorist crimes like sexual slavery.

Therefore, we are directing our efforts to change the messages from the most authoritative speakers: law enforcement, ASIO and the Government.

3.2 Australia's definition of terrorism

Australian law defines terrorism as an act or threat of serious violence or property damage (among other actions) that is intended to coerce or compel the government or intimidate the government or population (“**special intent**”) and is intended to advance a *political, religious or ideological cause* (“**motive element**”).² While the special intent is reflected in international legal instruments and the majority of nation-state law³, the motive element is an anomaly Australia inherited from the United Kingdom two decades ago. The model definition proposed by the relevant UN Rapporteur does not refer to motive.⁴

¹ Matteo Vergani, Fethi Mansouri, Liliana Orellana (2022) Terrorism concern and persistence of negative attitudes towards Islam and Muslims. *Community and Applied Social Psychology*. Volume 32, Issue 6

² Definition of a ‘terrorist act’, *Criminal Code Act 1995* (Cth), s 100.1(1)(b).

³ Jabri Markwell, R. (2023) “Religion as a Motive – Does Australian Terrorism Law Serve Justice?”, *International Journal for Crime, Justice and Social Democracy*. doi: 10.5204/ijcjsd.2686.; Vaughan, Katy (2022) Interoperability of terrorism definitions between the law and tech platforms. Report to the Global Internet forum to Counter Terrorism. AMAN's advisor facilitated the legal working group overseeing this paper.

⁴ UN General Assembly, Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (22 December 2010) [Model Definitions]. <https://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/a-hrc-16-51.pdf>.

3.3 Terrorism concern and the persistence of negative attitudes towards Islam and Muslims

Vergani et al state that

heightened concerns about terrorism that are often incorrectly conflated with Islam might hinder the effectiveness of interventions aimed at reducing anti-Muslim prejudice that is based on knowledge of Muslims and Islam...

This study demonstrates how terrorism concerns, which can be heightened by content circulating in the media, can hinder the effectiveness of such [education-based] interventions. In other words, this study's findings suggest that education programs aiming to reduce anti-Muslim prejudice can be more effective in contexts where the baseline levels of socially constructed concerns about terrorism are low. In environments where the threat perception and concern levels are politically framed to be high, the positive effects of prejudice-reduction interventions based on outgroup knowledge may be lessened. Taken together, the empirical findings reported in this article highlight the critical importance of responsible political leadership and nuanced media reporting, which can have a strong impact on terrorism concerns and consequently on the attitudes towards minority groups whose identities are conflated with the source of the perceived terrorism threat.⁵

Australian hate crime experts have called for decoupling Islam and terrorism in public discourse.⁶

3.4 Prevalence of anti-Islam and anti-Muslim sentiment

Over time, the confluence of legal, cultural and political power to conflate Islam and terrorism has profoundly dehumanised Australian Muslims by suggesting that they

- are polluting, despoiling, or debilitating an ingroup or society as a whole;
- have a diminished capacity for human warmth and feeling or to make up their own mind, reason or form their own individual thoughts;
- pose a powerful threat or menace to an ingroup or society, posing overtly or deceptively;
- are to be held responsible for and deserving of collective punishment for the specific crimes or alleged crimes of some of their "members";
- are inherently criminal, dangerous, violent or evil by nature;
- prey upon children, the aged, and the vulnerable;
- are inherently primitive, coarse, savage, intellectually inferior or incapable of achievement on a par with other humans;

⁵ Vergani, above n(2).

⁶ Australian Human Rights Commission, National Anti-Racism Scoping Report p.154

- must be excised or exiled from public space, neighbourhood or nation.⁷

This affects Australian Muslims, as shown in reported hate incidents⁸. This is brought about by the mainstreaming of hostile political rhetoric,⁹ which has fuelled anti-Islam movements. Anti-Muslim sentiment continues to be prevalent¹⁰ and simultaneously non-remarkable to Australian political leaders.¹¹

We also refer to the *Countering Islamophobia in the Victorian Population* Issue Paper by CRIS and the data collated from surveying 4019 Victorians and feedback from community and government stakeholders. Alarming, from the survey:

- Just under a half of the respondents would accept living near a mosque (48.4%).
- One-third (33.7%) agreed that women should not be allowed to wear the hijab in Australia, this rose to 48.9% when asked about wearing the niqab or burqa.
- Nine (9%) of respondents held blatantly supremacist and hostile views towards Muslims.¹²

3.5 Amending the terrorist act definition

The Australian Independent National Security Legislation Monitor has recommended removing the motive element from the terrorist act definition.¹³

Australian Governments can effectively respond to Nazism, racist nationalism, and other forms of violent extremism that violently deny Australia's cultural and religious diversity

⁷ [Policy Brief – Dehumanisation – AMAN](#)

⁸ Derya Iner, *Islamophobia in Australia Report, 2023* (Charles Sturt University and ISRA)

⁹ Derya Iner and Sean McManus. "Islamophobia in Australia." In *The Rise of Global Islamophobia in the War on Terror*, edited by Naved Bakali and Farid Hafiz. UK: Manchester University Press. See for eg: Conifer, D. (2015, December 5). Tony Abbot calls for 'religious revolution' inside Islam, defends controversial 2014 budget measures as 'justifiable and right'. ABC news; Davey, M. (2018, November 12). Bourke Street attack: Morrison accused of 'scapegoating' Muslim Community. The Guardian; Henderson, A. and Conifer, D. (2015, December 9). Malcolm Turnbull warns against blanket statements after Tony Abbott calls for Islam to change. ABC; Humphries, D. (2006, February 25.) Live here and be Australian, Howard declares. Sydney Morning Herald; Karp, P. (2018, November 12). Morrison urges Muslim community to be more 'proactive in tackling terrorism. The Guardian; Karp, P. (2020, April 20). Tony Abbott's anti-Muslim rhetoric while PM 'profoundly dangerous', Malcolm Turnbull says. The Guardian; Medhora, S. (2015, February 24). Tony Abbott urges Muslim groups to 'get with the program' and condemn extremism. The Guardian.

¹⁰ Kevin Dunn, above n (1).

¹¹ Based on a review of the Ministerial responses to successive Scanlon Foundation Reports which have shown exceptionally high levels of distrust and negative sentiment towards Muslims among Australians.

¹² Dunn, above n (1).

¹³ INSLM (2012) Annual Report < <https://www.inslm.gov.au/sites/default/files/inslm-annual-report-2012.pdf>> pp108-117.

through an amendment to the terrorist act definition to remove the motive element. This amendment will help to ensure that racist nationalists and Nazis are treated in line with community expectations under existing criminal law. It will

- (a) Clarify the legal test for prosecutors: It removes the uncertainty of how to satisfy the criminal burden of proof of 'ideological cause' in relation to racist nationalists.
- (b) Reduce arbitrary implementation: The overwhelming view from human rights lawyers and the United Nations Security Council¹⁴ is that a motive element leads to the arbitrary implementation of terrorism law, where some ideologies are treated as violent and others are not.
- (c) Disarm violent ideological narratives and recruitment: For twenty years, the official lexicon of 'religiously motivated' terrorism has lent authority to ISIS and racist nationalist narratives about Islam. ISIS wants its followers to believe it is religious and carries out a religious war. It wants to draw interest from young Muslims and can succeed where religious illiteracy is an issue. Racist Nationalists want their followers to believe Islam is incompatible, savage and inherently violent.
- (d) Support cultural change within law enforcement institutions: The removal of the motive element would refocus law enforcement on the core intention (to coerce or compel the government, cause intimidation to the government or population) and the conduct components of terrorist-related crimes.

3.6 Delay in repatriation

The Australian Government continues to delay the repatriation of remaining Australian women and children in Al Roj and Al Hawl in Northeast Syria. The remaining Australian women and children, as citizens (or as persons eligible for citizenship as the children of citizen mothers), have a right to return to Australia as a safe haven in their need: *Potter v Minahan* (1908) 7 CLR 277 at 295 (Griffith CJ), 305 (O'Connor J); *Alexander v Minister for Home Affairs* (2022) 96 ALJR 560 at [31], [74] (Kiefel CJ, Keane and Gleeson JJ); Universal Declaration of Human Rights, art 13(2).¹⁵ Toddlers and children are malnourished and acquiring disabilities and trauma from unattended medical conditions, injuries and detention conditions.

¹⁴ UN Security Council, Security Council Resolution 1566 (2004) [Concerning Threats to International Peace and Security Caused by Terrorism], 8 October 2004, S/RES/1566 (2004).

¹⁵ <https://www.federalcourt.gov.au/services/access-to-files-and-transcripts/online-files/save-the-children/filed-documents/Applicants-concise-statement-dated-5-June-2023-redacted-annexure.pdf> [para 15]

While and the longer the remaining Australian women and children are unlawfully and arbitrarily detained in Al-Roj camp, they face an increasing risk of serious harm or death, or cruel, inhuman or degrading treatment. As such, Australia must ensure they have an effective remedy: International Covenant on Civil and Political Rights, arts 2(3), 6, 7, 9 and 12; Convention on the Rights of the Child, arts 4, 6 and 37.¹⁶

3.7 Continuing Detention Orders (terrorism law)

Australia has an obligation under international law to ensure that even when attempting to prevent acts of terrorism, such attempts are consistent with human rights. The most important human right at risk of violation under Australia's anti-terror law framework is that of the right to liberty, which is under significant attack due to Australia's post-sentencing regime, particularly Continuing Detention Orders (CDO), which are a form of post-sentencing order allowed for under Division 105A of the Criminal Code (Cth). A CDO allows an offender to continue to be detained at the expiration of their sentence for up to three years at a time upon application by the Minister of the Australian Federal Police.

Article 9(1) of the International Covenant on Civil and Political Rights maintains that each person shall have a right to liberty, which may only be deprived in certain lawful circumstances.

In this regard, we refer to the findings of the Independent National Security Legislation Monitor (INSLM), which states that "all concerned citizens must be troubled by the detention of a person in a prison other than as a sentence for a crime that they committed"¹⁷.

The Review further opines that

it is not credible that lengthy detention is a proportionate response to the risk of an offender committing further Pt 5.3 offences upon release if little is required to be done by way of rehabilitation while an offender is serving their sentence and nothing is required to be done while they are detained post-sentence¹⁸.

¹⁶ Ibid, para 16.

¹⁷ Grant Donaldson, *Independent National Security Legislation Monitor Report*, 3 March 2023, 90.

¹⁸ Ibid, 97.

The post-sentencing regime relies heavily, if not entirely, on the predictive prowess of certain assessment tools and their ability to determine the likelihood of a particular offender committing further terrorism offences if released from custody at the expiration of their sentence.

Ultimately, the Review makes plain the explicit limitations of these tools, which, according to the INSLM, are “plainly flawed”¹⁹ and require urgent Review to bring the relevant legislation in line with international law.

3.8 Counterterrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (the Bill).

The Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (the Bill) is another example of counterterrorism legislation introduced straight into parliament with no exposure draft. The Bill, if passed into law, together with existing legislation, would contribute to the stigmatisation and alienation of the Australian Muslim community through:

- (a) Its unjustifiable ban²⁰ on the IS flag thereby creating the potential for criminalization of words, symbols and figures, which are of central spiritual importance to Muslims all around the world.

- (b) Furthering definitions of terrorism to include phrases such as “global jihadist ideology”²¹ and “religious cause”²² thereby legislatively drawing links between Islam as a religion and the commission of terrorist offences.

Australian Muslim organisations made a joint statement in response to the Bill expressing these very concerns.²³

¹⁹ Ibid, 102

²⁰ Fergus Hunter, ‘Islamic State flag flown over 300 times in NSW in last six years’, The Sydney Morning Herald (online, 1 December 2021) <<https://www.smh.com.au/national/nsw/islamic-state-flag-flown-over-300-times-in-nsw-in-last-six-years-20211130-p59dje.html>>.

²¹ *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023* (Cth) sch 1. Defences for public display of prohibited hate symbols.

²² *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023* (Cth) sch 2. Definition of violent extremist material.

²³ Joint Statement on behalf of the Australian Muslim Community, Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (1 September 2023) <http://www.aman.net.au/wp-content/uploads/2023/09/Joint-Statement-on-behalf-of-the-Australian-Muslim-Community-to-PJCIS-01.09.23.pdf>

The Bill also amends the Criminal Code Act 1995 (Cth) to remove the three (3) year sunset clause on the proscription of an organisation as a terrorist organisation.²⁴

Further, the Bill proposes new counterterror offences related to the possession, access or transmission of 'violent extremist material.' The Australian Federal Police explained to the PJCIS Inquiry that they expected these 5-year penalty offences to address the problem of youth radicalisation. The Law Council of Australia and AMAN have raised significant concerns about expanding terrorism law, especially as these offences don't require an intention to be involved in terrorism.²⁵ The impact of criminalisation on teenagers, including teenagers with autism, is unacceptable and continues to be a counterproductive approach that discourages early help-seeking. It is also not true that new counterterror laws are necessary to disrupt violent extremism early on. The Law Council of Australia said that existing sections 101.4 and 101.5 of the *Criminal Code* were sufficient to capture the type of conduct the Bill seeks to address. The Council cautioned against creating offences for simply accessing or possessing material,

There is a broader range of circumstances in which a person may unwittingly come across material that engages with extremist ideology that may meet the proposed definition of "violent extremist material...The broad definition of violent extremist material may inadvertently capture persons who access or view so-called "manifestos" which are directed to legitimate matters of political dissent or struggle.²⁶

Similar laws have been attempted in France and failed after being found to breach constitutional human rights.²⁷

3.9 Transparency of the proscription list process

AMAN believes that the Australian Government needs to be transparent about its criteria and consideration of this criteria for proscribing terrorist organisations. Given the number of self-declared Islamist organisations on the list that have no physical connection to

²⁴ *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023* (Cth) sch 4 pt 1.

²⁵ [Labor's counter-terror laws may stifle 'political dissent', Law Council warns | Australia news | The Guardian](#)

²⁶ Ibid.

²⁷ [Décision n° 2020-845 QPC du 19 juin 2020 | Conseil constitutionnel \(conseil-constitutionnel.fr\)](#)

Australia (which the Government readily admits), the list appears to be more of a foreign policy instrument. AMAN holds concerns with the discriminatory two-tier approach to policing and prosecuting terrorism fostered by the proscription list, which does not reflect the true landscape of terrorism.

3.10 Community observations of terrorism policing and sentencing

AMAN submits that the current counter-terrorism system thrives on demonising and socialising religion as terroristic, causes social exclusion, fractures cohesion and religious identities and social bonds, reduces trust in authorities, and denies mental health support.

Terrorism sentencing in Australia disregards age, the scope for rehabilitation, and the absence of harm as mitigating factors, making it inconsistent with other areas of criminal law.²⁸ It also leads to disparity in criminal treatment of racist nationalists not convicted under terrorism laws.²⁹ AMAN has also raised concerns about how persons with autism are treated differently depending on whether they are Muslim (and charged with terrorism) or non-Muslim (and charged with another non-terrorism offence).

From a pattern of publicly reported prosecutions, non-Muslims who express violent beliefs and have Autism³⁰ or PTSD³¹ are more likely to be convicted of minor non-terrorism offences and sentenced to lower penalties, including good behaviour bonds or home detention. At the same time, there is a tendency to view Muslim persons who express violent beliefs as being more intractable in those beliefs and more likely to produce violence.³²

²⁸ Hon. Mark Weinberg, 'Sentencing Terrorist Offenders – The General Principals' *The Australian Law Journal* 95 (10): 766, 770.

²⁹ Jabri Markwell, R. "The conflation of Islam and terrorism and the rise of far right extremism" in Iner, D (2022) *Islamophobia in Australia Report III*. (ISRA and Charles Sturt University: Sydney).

³⁰ See, for eg: R v Patrick Patmore [2023] SADC (unreported): an individual sentenced in the District Court of South Australia in February 2023 for a number of offences, including possession of extremist material. Expert evidence in that case adduced that Mr Patmore had ASD and developed a special fixation in extreme right-wing and terrorist material and that he had 'a history of being obsessed by topics. This has led to [him] being obsessed by the topics that formed the subject matter of [the] offending.'" Patmore was granted bail and ultimately sentenced to home detention: [Far-right group member Patrick Patmore sentenced to more than three years' home detention over extremist material - ABC News](#)

³¹ See for eg: [Adelaide man who made 'Mother of Satan' explosives eligible for parole within months - ABC News](#)

³² See, for eg: [Adelaide teen overheard saying he 'would do something' at Anzac service, court hears - ABC News](#) It was reported that the judicial officer queried the relevance of autism to the teen's collection of ISIS material and desire to socially connect through the sharing of this material. This Muslim teen was denied bail and is on remand in high-security prison.

The disproportionate enforcement of terrorism laws has raised concerns over potential discrimination and unequal police treatment towards the Muslim community.³³ Young people suspected of ‘radicalisation’ are pushed to the limits and denied mental health support.³⁴

3.11 Accountability

The Australian Government seeks to pre-emptively address its counterterrorism framework in its report, stating that “Australia’s legislative framework contains thresholds and safeguards to ensure powers are proportionate and targeted, including through independent reviews”³⁵.

While acknowledging the existence of certain safeguards, including the INSLM, AMAN respectfully submits that they have been both insufficient and ineffective in curbing the oppressive nature of Australia’s counterterrorism laws. The INSLM’s own report, cited above, is scathing in its assessment of the effectiveness and justifiability of those very laws to little end so far.

The report states that “the Comprehensive Review of the Legal Framework of the NIC [National Intelligence Community] considered a range of matters including accountability and oversight of NIC agencies. The Review presented a classified report to the Australian Government in December 2019. It will provide an unclassified version in the near future”³⁶. AMAN calls for the urgent release of the unclassified report, particularly noting that almost four years have passed since the presentation of the report.

3.12 Protecting the public information sphere from dehumanising material

We must address harmful behaviour in the public information environment by corporations, whether traditional or social media (rather than locating the burden on the community and police). However, the standards of what constitutes clearly vilifying

³³ Eden Gillespie, ‘Islamic leaders question why police didn’t lay more serious charges after Brisbane Mosque threat’, *The Guardian*, (online, 5 October 2022) < <https://www.theguardian.com/australia-news/2022/oct/05/islamic-leaders-question-severity-of-charge-after-mans-threat-to-brisbane-mosque>>.

³⁴ Eden Gillespie, ‘Queensland police declined father’s requests for help before son was shot dead, inquest told’, *The Guardian*, (online, 18 July 2023) < <https://www.theguardian.com/australia-news/2023/jul/18/queensland-police-declined-fathers-requests-for-help-before-son-was-shot-dead-inquest-told>>

³⁵ Australian Government, Attorney-General’s Department, ‘National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21’, 8.

³⁶ *Ibid.*

material should be set with community endorsement and be universal in that they apply to all groups of humans identified based on protected characteristics. We note significant community disagreement about what hate speech looks like in different contexts, so settling on 'red line' behaviour that applies universally is critical. Dehumanising material is a particularly dangerous form of hatred that has been a precursor to genocidal atrocities throughout history. For several years, AMAN has been refining a definition of dehumanising material in **Schedule A**.

At the federal level, this includes:

- (a) Amendment to the Online Safety Act to regulate dehumanising material targeting groups based on protected characteristics. Please refer to our updated working definition in Schedule A.
- (b) Amendment to the Broadcasting Services Act to not allow news outlets to amplify ISIS media, Nazi and racist nationalist media in a way that supports their recruitment.
- (c) Introduction of communications legislation to regulate digital platforms that fail to moderate misinformation and disinformation that incites hatred against groups based on protected characteristics (exposure legislation is currently open for consultation)

3.13 Support for the human rights of Aboriginal and Torres Strait Islander peoples

There is a disappointingly drastic gap between Indigenous and other Australians in education, incarceration, life expectancy and unemployment.

First Nations people remain the most incarcerated people on earth, representing 26% of Australia's prison population despite only making up 2% of the total population. First Nations children are 26 times more likely to be incarcerated than their non-Indigenous counterparts³⁷.

Reports from the Attorney-General's Department (AGD) to the UPR indicate that even targets previously set by the Australian Government to address these gaps have largely not been met. The AGD reported that the "Australian Government remains committed to recognising Indigenous Australians in the Constitution and will hold a referendum should

³⁷ Amnesty International, 'The overrepresentation problem: First Nations kids are 26 times more likely to be incarcerated than their classmates'; <https://www.amnesty.org.au/overrepresentation-explainer-first-nations-kids-are-26-times-more-likely-to-be-incarcerated/>

consensus be reached and it has a strong chance of succeeding"³⁸. We commend the Australian Government for pursuing constitutional recognition.

The following matters are also of concern:

Targets to close the gap in school attendance and halve the gap in reading, numeracy and employment by 2018 were not met, although the gap narrowed across all year levels and there has been improvement in reading and numeracy. The target to halve the gap in child mortality rates by 2018 has progressed, but not sufficiently to meet the target. The national Indigenous employment rate has remained stable against the target to halve the gap by 2018. The target to close the gap in life expectancy by 2031 is not on track.³⁹

The global opinion on these matters is extant throughout the Report of the Working Group on the UPR with key regional and political allies, including Vanuatu, France, China and Indonesia, calling for the elimination of systematic discrimination and inequality experienced by Indigenous peoples⁴⁰. Vanuatu, Czechia, Slovakia and the United Kingdom specifically recommended the implementation, Constitutional recognition and/or legislation committed to granting ATSI peoples' Parliamentary representation⁴¹.

In light of domestic expectations and the evident continual stain on Australia's international reputation that these ongoing issues represent, AMAN submits that ATSI issues should also be at the forefront of the Government's priorities with respect to its compliance with international legal instruments and the UPR.

³⁸ Australian Government, Attorney-General's Department, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21', 10.

³⁹ Ibid, 11.

⁴⁰ United Nations General Assembly, 'Report of the Working Group on the Universal Periodic Review – Australia', 12-13.

⁴¹ Ibid, 18.

SCHEDULE A

(1) Dehumanising material is the material produced or published, which an ordinary person would conclude, portrays the class of persons identified on the basis of a protected characteristic (“class of persons”) as not deserving to be treated equally to other humans because they lack qualities intrinsic to humans. Dehumanising material includes portraying the class of persons:

(a) to be, or have the appearance, qualities, or behaviour of

(i) an animal, insect, filth, form of disease or bacteria;

(ii) inanimate or mechanical objects; or

(iii) a supernatural alien or demon.

(b) are polluting, despoiling, or debilitating an ingroup or society as a whole;

(c) have a diminished capacity for human warmth and feeling or to make up their own mind, reason or form their own individual thoughts;

(d) homogeneously pose a powerful threat or menace to an in-group or society, posing overtly or deceptively;

(e) are to be held responsible for and deserving of collective punishment for the specific crimes, or alleged crimes of some of their “members”;

(f) are inherently criminal, dangerous, violent or evil by nature;

(g) do not love or care for their children;

(h) prey upon children, the aged, and the vulnerable;

(i) was subject as a group to past tragedy or persecution that should now be trivialised, ridiculed, glorified or celebrated;

(j) are inherently primitive, coarse, savage, intellectually inferior or incapable of achievement on a par with other humans;

(k) must be categorised and denigrated according to skin colour or concepts of racial purity or blood quantum; or

(l) must be excised or exiled from public space, neighbourhood or nation.

(2) Without limiting how the material in section (1) is presented, forms of presentation may include,

(a) speech or words;

(b) the curation or packaging of information;

(c) images; and

(d) insignia.

Intention component

If the above definition was used as a standalone civil penalty, it should be complemented by an intention component:

in circumstances in which a reasonable person would conclude that the material was intended to portray the class of persons as not deserving to be treated equally to other humans or to incite hatred, serious contempt or severe ridicule toward the class of persons.

Adding an intention element may make enforcement more difficult and may not be necessary, especially if the definition is used as part of a legal framework where there are already intention components or exceptions available.

How did we develop this working definition?

AMAN developed this working definition after spearheading a study of five information operations online (Abdalla, Ally and Jabri-Markwell, 2021). The first iteration of this definition was published in a joint paper with UQ researchers (Risius et al, 2021). It continues to be developed with input received from researchers, lawyers and civil society.

Possible dehumanising conceptions are surfaced through research and then tested against Haslam's frame of whether it deprives a group of qualities that are intrinsic to humans.

If a subject is dehumanised as a mechanistic form, they are portrayed as 'lacking in emotionality, warmth, cognitive openness, individual agency, and, because [human nature] is essentialized, depth.' A subject that is dehumanised as animalistic, is portrayed as 'coarse, uncultured, lacking in self-control, and unintelligent' and 'immoral or amoral' (258).

Some conceptions are found to fall outside the frame of dehumanisation but could still qualify as vilification or discrimination, for example, using anti-discrimination laws.

The three categories of dehumanising comparisons or metaphors in Clause (a) are drawn from Maynard and Benesch (80), and fleshed out with further examples from tech company policies (refer to Meta for example).

Clause (b) is derived from Maynard and Benesch (80).

Clause (c) is derived from Haslam (258).

Clauses (d) and (e) are elements of dangerous speech that Maynard and Benesch refer to as ‘threat construction’ and ‘guilt attribution’ respectively (81). However, Abdalla, Ally and Jabri-Markwell’s work shows how such conceptions are also dehumanising, as they assume a group operates with a single mindset, lacking independent thought or human depth (using Haslam’s definition), and combine with ideas that Muslims are inherently violent, barbaric, savage, or plan to infiltrate, flood, reproduce and replace (like disease, vermin)(15). The same study found that the melding and flattening of Muslim identities behind a threat narrative through headlines over time was a dehumanisation technique (17). Demographic invasion theory-based memes (9) or headlines that provided ‘proof’ for such theory (20) elicited explicit dehumanising speech from audiences.

Maynard and Benesch write, ‘Like guilt attribution and threat construction, dehumanization moves out-group members into a social category in which conventional moral restraints on how people can be treated do not seem to apply’ (80).

Clauses (f), (h), (i) are drawn from the ‘Hallmarks of Hate’, which were endorsed by the Supreme Court of Canada in *Saskatchewan (Human Rights Commission) v. Whatcott* 2013 SCC 11, [2013] 1 S.C.R. 467. These Hallmarks of Hate were developed after reviewing a series of successful judgements involving incitement of hatred to a range of protected groups. These clauses were tested using Haslam’s definitional frame for the denial of intrinsic human qualities.

Clauses (f) (‘criminal’) and (g) are drawn from harmful characterisations cited in the Uluru Statement of the Heart.

Clauses (j) and (k) are drawn from AMAN’s observations of online information operations generating disgust toward First Nations Peoples. Disgust is a common effect of dehumanising discourse. These clauses were tested using Haslam’s definitional frame for the denial of intrinsic human qualities.

Clause (l) was drawn from Nicole Asquith's Verbal and Textual Hostility Framework. (Asquith, N. L. (2013). The role of verbal-textual hostility in hate crime regulation (2003, 2007). Violent Crime Directorate, London Metropolitan Police Service.) The data and process used to formulate this Framework is exceptional. Reassuringly, this research had surfaced examples that were already captured by this Working Definition of Dehumanising Material.

This working definition is a work in progress. AMAN welcomes feedback as it continues to be developed.

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