

A submission to the Australian Government on the

EXPOSURE DRAFT

RELIGIOUS DISCRIMINATION BILL

2 OCTOBER 2019



A joint submission made by a number of national and state based organisations which are involved in the Australian Muslim community

The submission is focused on the issue of achieving legislative protection against the dangers which arise from vilification and incitement to hatred and/or violence based on a person's religion or religious belief.

This matter is one of deep concern and urgent priority for the Australian Muslim community, particularly given the absence of adequate, consistent and appropriate laws at the federal level and also across the States and Territories to deal with such conduct.

INTRODUCTION



This is a joint submission made by a number of national and state based organisations which are involved in the Australian Muslim community. The relevant organisations, each of which is active in the Australian Muslim community and is a signatory to this submission in a representative capacity, are listed in Schedule 1 to this Submission.

This submission has a singular focus: achieving legislative protection against the dangers which arise from incitement to hatred and/or violence based on a person's religion or religious belief.

The Australian National Imams Council has separately conferred with other religious organisations relating to the Religious Discrimination Bill, including through the Australian Religious Alliance. A number of other religious organisations have indicated a broad support for some protective provision against incitement to hatred and/or violence based on a person's religion or religious belief. The Australian National Imams Council has also indicated a support for the drafting and consequential matters raised by those other organisations.

The signatories to this submission note that there are other matters which arise in relation to the drafting of the Religious Discrimination Bill. We acknowledge these are being addressed in other submissions, including the submission by the Australian Federation of Islamic Councils.

OVERVIEW

This submission:

- a) outlines a shared vision for Australia and the growing threats to that vision;**
- b) examines the shortcomings of the current legislative framework;**
- c) highlights, by way of example, commonplace scenarios which have no legal recourse; and**
- d) contends for a civil remedy to be included in the Religious Discrimination Bill.**



**THE RELIGIOUS
DISCRIMINATION
BILL OFFERS A CRITICAL
OPPORTUNITY TO
FINALLY ADDRESS AN
URGENT AND PRESSING
CONCERN.**

Australian Muslims (and indeed people of minority faiths more generally) need a form of recourse to challenge those who openly vilify them and incite hatred and/or violence against them on the basis of their religious belief or activity. Legislative recourse is needed:

- a) as a matter of equity, as protections only exist in a few States, and at the Federal level only for some religious communities; and
- b) as a response to endemic levels of harmful content that have become mainstream online, that are radicalising potentially violent individuals and making it 'normal' to attack other Australians in public places because they are readily identifiable as Muslim.



Religious freedom

As acknowledged by the Attorney General, the Honourable Christian Porter MP, at the time of releasing the Religious Discrimination Bill, individuals should be free to manifest their religious belief not merely in thought or prayer but in practice, speech and teaching (within the confines of the law).

Fundamental to religious freedom is also the ability to manifest that faith and identify one's religious identity and belief without fear of vilification or violence to oneself or one's family.

Sadly, many Australian Muslims have not had that freedom and, following the tragic events of Christchurch, there has been a reported increase in Islamophobic attacks directed at Australian Muslims based on their religious identity.



A Shared Vision

Our vision is an Australia with a hopeful and vibrant sense of nationhood; one that owns and celebrates its cosmopolitan nature.

Necessary to that nationhood is the ability to grasp with the most difficult contentions and tensions with honesty, genuine listening and mutual respect.

The strength of our liberal democracy is core, not only in protecting freedom of expression and encouraging quality debate, but also in upholding equality of opportunity and respect amongst diverse peoples.

Proud Australian Muslims



Photo: The Makassans at Port Essington on the Coburg Peninsula in 1845, by H.S Melville. (Supplied: Campbell Macknight)



An Afghan camel driver with a camel train loaded with chaff, ca. 1911. Photograph courtesy of the State Library of South Australia. SLA: B 14808

Australian Muslims are part of this country, and have always been. From the Makassan trade with Aboriginal peoples pre-dating colonisation, to the Afghan cameleers and other migrant communities from the early 19th century,

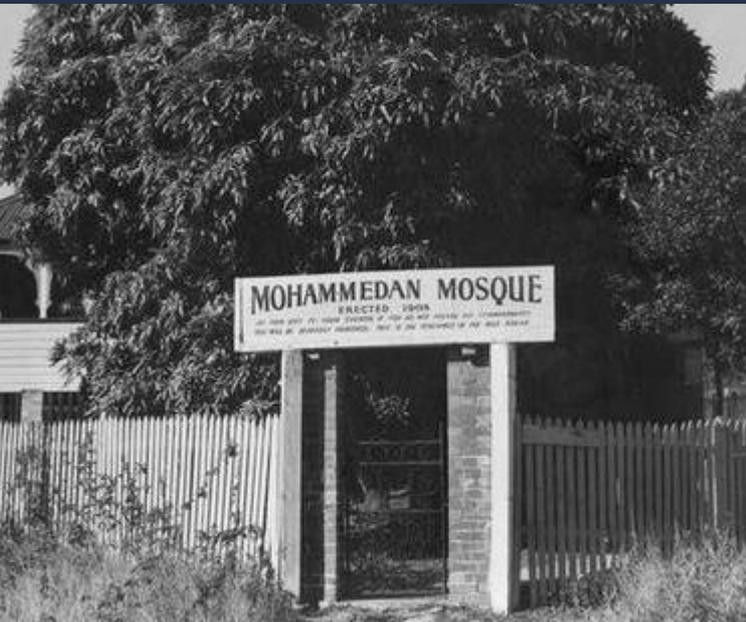
Australia's story has a beautiful and rich Muslim story within it.

Our vision is that this story be more widely known and upheld, and that a clear message of intolerance be sent to “these people who desire to do our community harm and to break those bonds in our community that make it what it is today” (Bert Van Manen MP, speaking after Christchurch).

The Holland Park story

QUEENSLAND, AUSTRALIA

There are many holy places in Australia that symbolise respect and unity between diverse peoples.



The first bricks of Holland Park mosque were laid a few years after Australia's federation.

Over five generations of Queenslander families have gathered in this peaceful oasis for prayer, to break fast in Ramadan, to be with their families and other families from different ethnic backgrounds – united by one abiding faith.

After Christchurch, the mosque received an outpouring of love from surrounding community.

Earlier this year, locals were shocked to see an online video of two election candidates outside this mosque, claiming that the 'Islamification of Australia' was 'a huge threat'. Within a few months, strangers were throwing beer bottles into this place and swearing at worshippers as they entered for Friday prayers. Next, a hateful leaflet drop in the suburb occurred.

In the early hours of 11 September 2019, worshippers arrived to discover across its front walls was written "remove kebab", "St.Tarrant" and a large swastika.



The term "Remove Kebab" is a genocidal term that originated in the 1990s in Serbia, and was used by Brenton Tarrant in his manifesto. It was written on one of his weapons. "Remove kebab" is a call to expel or kill Muslims.

This action was more than a salute towards the man who filmed and broadcast his murder of 51 Muslim men, women and children praying peacefully in a Christchurch mosque.

It was more than an attempt to instil fear and terror in Australian Muslims.

This particular mosque, with its long history, was targeted for a reason.

It was an attack on the Australia that this radicalised person could not accept.



Threats to this shared vision

53%

**OF AUSTRALIAN
YOUTH HAVE
WITNESSED
ANTI-MUSLIM
HARMFUL CONTENT
ONLINE**

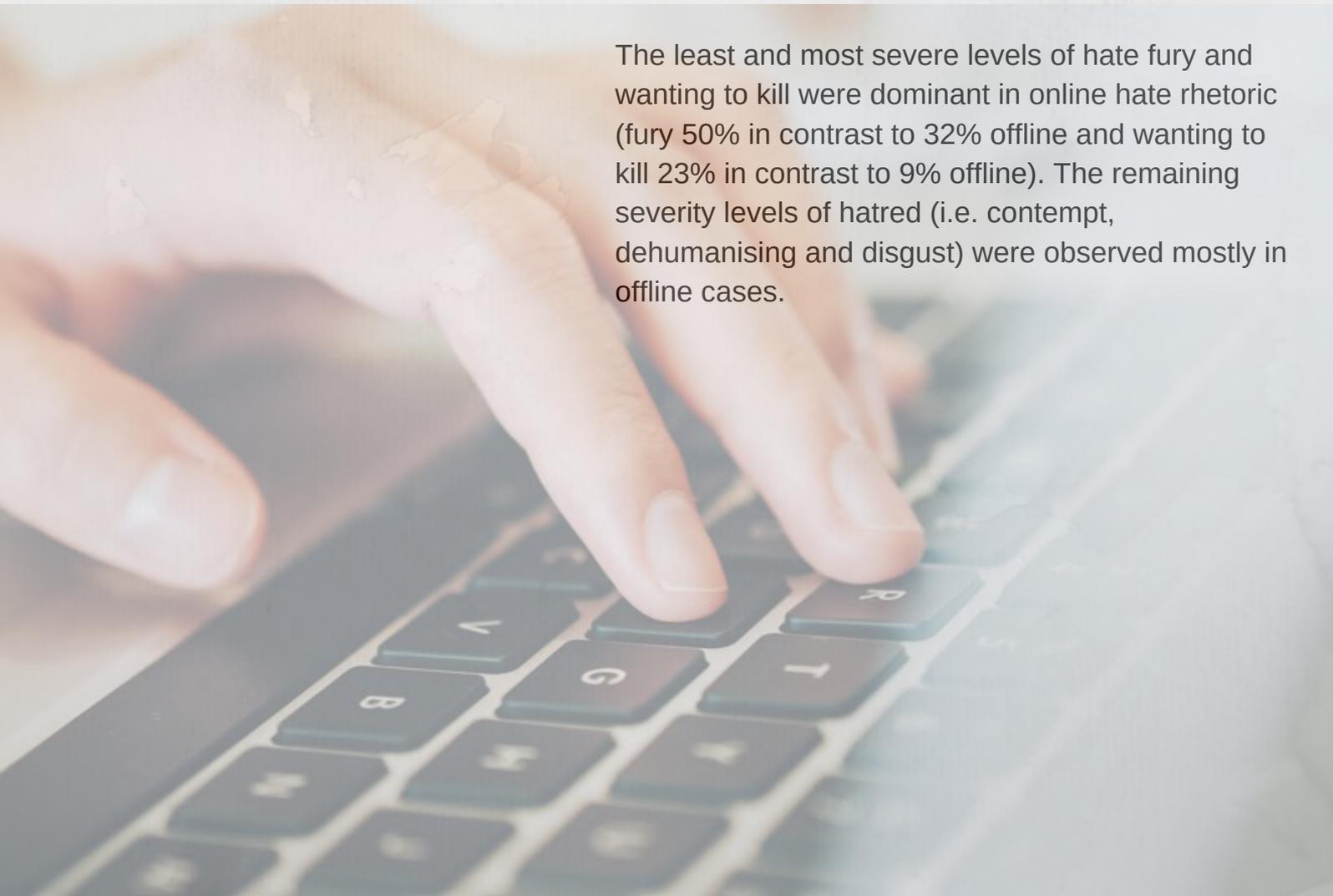
OFFICE OF E-SAFETY COMMISSIONER,
RESEARCH STUDY

The Holland Park scenario demonstrates the impact of speech on real world activity.

The second report of the Islamophobia Register Australia (soon to be published by Charles Sturt University) shows comments calling for civil war, mass killing, burning alive, shooting and branding of Australian Muslims.

Vilification or inciting hatred can be understood as the initial stage of hate crime. Being online or offline was not a deterrent to expression of hate as there was no meaningful and distinctive distribution between online and offline hate levels.

The least and most severe levels of hate fury and wanting to kill were dominant in online hate rhetoric (fury 50% in contrast to 32% offline and wanting to kill 23% in contrast to 9% offline). The remaining severity levels of hatred (i.e. contempt, dehumanising and disgust) were observed mostly in offline cases.



THE IMPACTS

In social policy terms, the impacts are devastating:

- a) victims experience vilification as part of a continuum of disrespect, discrimination and endangerment;
- b) vilification normalises negative attitudes, sending the message that anti-Muslim sentiment is acceptable (Jakubowicz et al. 2017); and
- c) vilification is closely linked to severe forms of violent extremism (Cohen-Almagor 2018) such as the massacre of Muslim New Zealanders in Christchurch on 15 March 2019..

REAL WORLD CONSEQUENCES

The Islamophobia Register has recorded:

- a) acts of discrimination or bullying, such as at school or work;
- b) attacks on mosques and Islamic schools;
- c) verbal insults, posters, graffiti or targeting a Muslim woman wearing a hijab; and
- d) physical attacks involving brutal violence.

60%

of incidents

occurred in guarded areas. A reversal of the previous year's pattern.

64%

of incidents

occurred in community frequented public places

These incidents often occur in hotspots such as shops, schools, public buildings, public transport and carparks. According to findings from the previous report, around two-thirds of the cases (69%) occurred in unguarded areas. The pattern reversed in the current report: 60% of cases occurred in guarded areas.

The findings highlighted the unpredictability of location while demonstrating perpetrators' recklessness, who do not abstain from harassment in the presence of security guards.

A large proportion (64%, n=119) of incidents took place in commonly frequented places such as shops, schools, universities, on public transport, in traffic, carparks, petrol stations, official buildings, airports, hospitals, events and leisure centres. With more than half of incidents occurring in public spaces, making anti-Muslim attacks visible, the high frequency of such harassment can lead to the normalisation of Islamophobia.

78%

**of in person attacks were
on Muslim women**

57%

**of victims were
unaccompanied**
at the time of attack

96%

**of targeted women
were wearing hijab**
at the time of attack

Islamophobia in Australia Report-II (Iner, 2019) analysing the incidents reported to the Islamophobia Register Australia, showed:

- a) Muslim women continue to be the main targets of offline Islamophobic hatred (78%), bearing the brunt of public antipathy, including insulting and misogynistic remarks. 57% were unaccompanied at the time of the incident.
- b) Children may be targeted or be present when these incidents occur, forcing their parents to make a difficult choice about how best to respond. Targeted children were either with mothers (11%), with both parents (1.4%) or alone (2%).
- c) Verbal abuse associated with religion is much more common than verbal abuse associated with terrorism. This was applicable to both offline and online cases; and
- d) Vulnerability to hate crime is closely linked to visibility. For Muslims, wearing religious clothing or talking in one's first language in public can make people feel unsafe and prompt them to change their behaviour or appearance to avoid victimisation. 96% of the female victims in offline cases were wearing hijab.

It is known in the Muslim community that only a very small minority of victims are reporting incidents to the Register or police.

References:

Iner, Derya, ed. Islamophobia in Australia 2014-2016. Sydney: Charles Sturt University, Centre for Islamic Sciences and Civilisation, 2017.

Iner, Derya, ed. Islamophobia in Australia 2016-2017. Sydney: Charles Sturt University, Centre for Islamic Sciences and Civilisation, 2019.

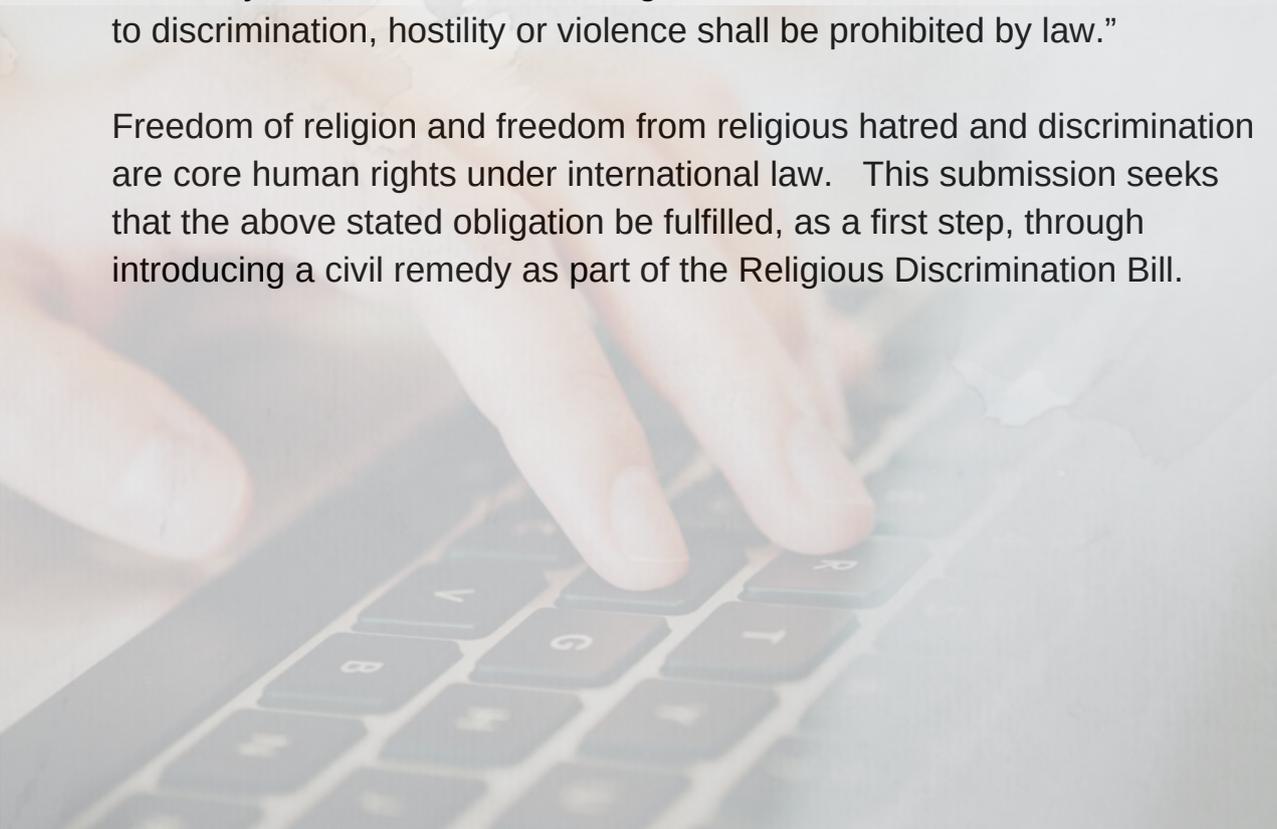
Iner, Derya, Iman Zayied and Matteo Vergani. "Analysis of Islamophobia Register Australia Data 2014-2015." In Islamophobia in Australia 2014-2016, edited by Derya Iner, 41-86. Sydney: Charles Sturt University, Centre for Islamic Sciences and Civilisation, 2017.

Federal Responsibility

As the Attorney General stated in his speech during the release of the Religious Discrimination Bill, our laws need to be fit for deterring incitement to hatred and violence. Improving criminal laws, policing, prosecution and data collection in regards to bias crime is an important step. However, that action alone is not going to deal with the underlying causes of bias crime, which largely start in the online sphere, and are propelled by extremist ideology and networks. These fields are areas of Commonwealth jurisdiction.

As a signatory to the International Covenant on Civil and Political Rights, Australia is empowered to enact laws prohibiting both religious discrimination and vilification. Article 19(3) states that the exercise of freedom of expression carries with it 'special duties and responsibilities' and that a State may limit the freedom where necessary to respect the rights and reputations of others and to protect national security, public order, public health and/or public morals. Article 20(2) provides: "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Freedom of religion and freedom from religious hatred and discrimination are core human rights under international law. This submission seeks that the above stated obligation be fulfilled, as a first step, through introducing a civil remedy as part of the Religious Discrimination Bill.



Existing Legislation

At the federal level, some religious communities have protection because they have been categorised as ethno-religious communities (for example Jewish and Sikhs) under section 18C of the Racial Discrimination Act 1975. Australian Muslims are vulnerable due to the fact they are readily identifiable by their names, dress, appearance and attendance at places of worship, yet have no effective protection at the federal level and across half of the states from vilifying speech or conduct. Attached to this submission is a comparative legislation table. This table indicates the existing legislation dealing with vilification and, in the final column, points to some of the limitations and deficiencies of these existing laws.

This summary of the existing level of protection across different Australian jurisdictions supports the urgent need for a law which applies at a federal level and delivers a consistent outcome.

The Victorian vilification laws are starting to be used to great effect and should also be considered. For example, a Muslim woman was able to lodge a complaint to the Victorian Equal Opportunity and Human Rights Commission after a teacher at an education institute used lecture slides during a subject on diversity suggesting that while "most Muslims are peaceful", up to 300 million Muslims were "radicals who want to destroy and murder". This opportunity for recourse has helped her to address the acute disempowerment and vilification she experienced during those classes, but according to the institute, the lodging of the complaint has also served as a constructive catalyst for more empirical reviews of course content. Of concern, it is understood that the education institute initially resisted internal complaints to it about the course content and did not act upon them. A student in a similar situation in NSW, SA, WA or the NT would today have no such recourse.

Scenario Analysis

There are certain scenarios of discrimination and incitement to hatred and violence, which are commonplace. The examples below are based upon real life examples to demonstrate fundamental gaps in the present laws.

Scenarios needing legal recourse: Will the proposed Act help?

At work B was called a terrorist for keeping a beard. The company refused flexible time for prayers including Friday prayers. B was also targeted with verbal assault in a meeting room by an employee and manager. B was singled out on many occasions in events because B does not drink and was told by my manager repeatedly that it's not the Australian way that you don't drink. B reports it to HR, who tell him there's nothing they can do. ✓

In a positive step, the Bill defines and makes unlawful direct and indirect discrimination on the grounds of religious belief or activity.

A young man makes a public FB post to praise the Christchurch terrorist and propagate the Great Replacement theory. It is shared and liked widely. He is reported and banned from Facebook, but he returns and continues posting. The video is shared with police who do not lay charges. The community want him to understand the impact of his posts and to stop further posts. ✗

A person posts an image of a woman in hijab at the shops with the dehumanising remark 'brainwashed baby-making scum'. It is shared a hundred times and receives likes and laughs. The victim in the photo is unknown and unaware. No action from police. The community want to conciliate to help him understand the impact of his posts. ✗

An organisation with the platform of 'stop the Islamic invasion' places stickers and leaflets in suburbs across several States, looking for recruits. Their website alleges all Muslims are a threat who are trained to deceive. They argue for the exclusion of Muslims from Australia. No action from police. The community want to have the website taken down. ✗

A known man vilifies a Muslim woman in front of her children in a carpark. The woman reports feeling 'numb and isolated' since the event. The children are extremely anxious. Police say insufficient evidence. Event happened in NSW, so no vilification protection (same as WA and SA). ✗

Proposed provision

The option of civil recourse would enable affected community members to bring the other party to the table; describe the impacts of their conduct; and show there is a consequence.

The authors of this submission have proposed, as an example, the type of provision which may be considered for inclusion in the Religious Discrimination Bill.

Importantly, it needs to be clearly stated that the proposed provision:

- a) does not seek to replicate or borrow from the existing provisions of s.18C of the Racial Discrimination Act 1975;
- b) is focused on conduct which creates a situation of danger and risk to the affected persons; and
- c) seeks to distinguish between conduct which is directed at the person rather than conduct or speech about any religion.

The above considerations and rationales are discussed in further detail below.

THE PROPOSED PROVISION WOULD MIRROR THE LANGUAGE OF SECTION 41(2)(B) OF THE RELIGIOUS DISCRIMINATION BILL TO THE EFFECT THAT:

(1) A person must not, on the ground of the religious belief or activity of another person or class of persons, engage in conduct that would, or is likely to, harass, vilify or incite hatred or violence against that other person or class of persons. Note: "engage in conduct" includes use of the internet or e-mail to publish or transmit statements or other material.

(2) For the purposes of sub-section (1), conduct— (a) may be constituted by a single occasion or by a number of occasions over a period of time; and

(3) In determining whether a person has contravened subsection (1), it is irrelevant whether or not the person made an assumption about the religious belief or activity of another person or class of persons that was incorrect at the time that the contravention is alleged to have taken place.

IT IS UNDERSTANDABLE THAT THERE MAY ALSO BE THE NEED FOR APPROPRIATE DEFENCES TO THE GENERAL PROVISION, FOR INSTANCE, DISTINGUISHING BETWEEN PUBLIC AND PRIVATE CONDUCT. BY WAY OF EXAMPLE, THESE PROVISIONS MAY BE IN TERMS SUCH AS:

(4) A person does not contravene subsection (1) if the person establishes that the person's conduct was engaged in reasonably and in good faith—
(a) in the performance, exhibition or distribution of an artistic work; or
(b) in the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in, for any genuine academic, artistic, religious or scientific purpose; or
(c) in making or publishing a fair and accurate report of any event or matter of public interest.

(5) (a) A person does not contravene sub-section (1) if the person establishes that the person engaged in the conduct in circumstances that may reasonably be taken to indicate that the parties to the conduct desire it to be heard or seen only by themselves.

(b) Sub-section (5a) does not apply in relation to conduct in any circumstances in which the parties to the conduct ought reasonably to expect that it may be heard or seen by someone else.

Rationale for provision

The above proposed provision provides consistent protection to religious communities at risk of endangerment around Australia. It does so in circumstances where the level of protection across different States and Territories is inconsistent and, in some cases, absent.

This proposed provision employs the threshold language used by the Government in section 41(2)(b) of the Religious Discrimination Bill. Although that section operates in a different manner, it shares a jurisprudential basis.

Inciting hatred and violence sets a higher bar than section 18C of the Racial Discrimination Act in recognition of the need to provide scope for religious criticism and debate. This threshold connects to the policy imperative of minimising risk and endangerment of people.

This wording also distinguishes between criticism or slander of religion, and vilification of people. Accordingly, it cannot operate akin to past blasphemy laws.

The objectives of this proposed provision are:

- **Avoidance of violence or harm:** The enabling environment for violence is created by incitement of hatred as well as incitement of violence;
- **Sense of security:** It is not only about ensuring the safety of all Australians, but also protecting the sense of security of all Australians, which is eroded by acts of vilification;
- **Social cohesion:** The ASIO Director- General Duncan Lewis said 2015 “If there is indeed a silver bullet to solving the issue of radicalisation, it is in the area of social cohesion” ;and
- **Social harmony:** is vital to the success of Australian society, democracy and its economy.

Distinguishing between inciting hatred and lawful forms of speech

Inciting hatred creates the enabling environment for acts of violence. Sometimes this is done through promoting the idea of violence (eg “the only good Muslim is a dead Muslim”) while dehumanising people so it becomes easier to victimise them (eg calling them “cockroaches”, “scum”, “a disease”).

It is acknowledged that some vilification is close to the border of religious criticism, and even reasonable comments about followers of a religion, which are lawful forms of free speech. But there are existing legal guideposts to make judgements about what is reasonable and done in good faith. Both of these concepts have been considered in depth at the federal level (see *Bropho v Human Rights Equal Opportunity Commission* [2004] 135 FCR 105.)

As one example, the tribunal in the *Sonia Kruger* case [*Ekeremawi v Nine Network Australia Pty Limited* [2019] NSWCATAD 29] said:

'In our view, Ms Kruger could have expressed her comments in a more measured manner to avoid a finding of vilification. For example, she could have referred to the need for Australia to engage in greater security checking of people wishing to migrate to Australia who may happen to be Muslims and the need to prevent a drift towards radicalisation amongst Muslims currently in Australia, rather than simply stating that 500,000 Muslims represents an unacceptable safety risk which justifies stopping all Muslim migration.' Incidentally, while the conduct was found to be vilification, it was also found to be lawful. Religion is not a protected attribute in the Anti-Discrimination Act 1977 (NSW) and Australian Muslims are otherwise unable to avail of the protected category of an “ethno-religious” group.'

Benefits of a Civil Process

There are many benefits to providing a civil remedy which offers some protection to religious communities at risk of endangerment around Australia. There is established evidence of the benefits of civil process as a form of restorative justice that can reduce the chances of offending by building insight and mutual understanding.

First, it does not rely solely on criminal legislation across the States or federally, which is limited to acts of, or incitement to, violence; is rarely used; has many prosecutorial challenges, not the least of which is the lengthy time which can be taken to prosecute a matter to finality.

Second, through the practice of pre-conferencing (done separately with each party) and the conciliation meeting (done together), there is an opportunity for both parties to express their grievances and concerns, and gain insight into the other side's perspective.

A conciliator will generally make a decision about how the conciliation will run (in person, or via shuttle/teleconference) taking into account individual circumstances, including safety concerns of either party.

As a matter of procedure, following opening statements, there is exploration, where each party is given the opportunity to say everything that they need to say without interruption. Private sessions follow immediately after, where each party considers the stakes of not reaching an agreement, through reality testing their position.

The goal of conciliation is to achieve an enforceable legal agreement and it is up to the complainant to articulate the terms on which they would like to settle first, before negotiation begins. Anything said in that conciliation meeting is privileged, private and confidential.

Conclusion

Incitement of hatred and violence is a fundamental threat to Australian Muslims. Most Australian Muslims continue to be readily identifiable by their names, appearance, dress and attendance at places of worship.

It threatens their freedom to express their religious identity, creates significant stress for their children and youth, and erodes their sense of security and belonging.

When it results in real world attacks, the psychological impacts are lasting. Inciting hatred and violence fractures social cohesion, a key protective factor for our society.

It undermines the ability of our democracy to foster social harmony, by making it harder for certain groups to safely participate in debate. All Australians can argue and discuss issues without endangering people through vilification – that is a standard we have to make clear to mitigate this tide of incitement that is now mainstream and endemic.

In this submission, we have proposed a reasonable and minimal protection that will help to address the significant inequities that exist across Australia in terms of law, and provide some recourse for our organisations and community members to bring parties to the table and to account, who are endangering our community with their speech and conduct.

We would be pleased to respond to any questions or provide further information and explanation relating to the matters raised in this submission.

Schedule 1: List of signatories to this submission

Australian National Imams Council (ANIC)
Australian Federation of Islamic Councils (AFIC) - Muslims Australia
Australian Muslim Advocacy Network (AMAN)
Abu Hanifah Institute NSW
AIM VIC
AISA (Milli Gorus) VIC
Al Salaam Islamic Society WA
Al-Bayan Institute NSW
Al-Hidayah Center WA
Al-Khalil Mosque SA
Al-Taqwa Mosque VIC
Alquds Centre NSW
AMSSA (Somali) VIC
Arabic Community Association of WA WA
Ararat Islamic Welfare Association Inc VIC
Ashabul Kahf NSW
Aswj Auburn NSW
Aswj Liverpool NSW
Aswj Revesby NSW
Aswj SE - Ahlus Sunnah Wal Jama'ah, South East. VIC
ASWJ Sydney NSW
Auburn Islamic Community Centre NSW
Australian Burmese Rohingya Association VIC
Australian Institute of Islamic Culture (AIIC) NSW
Australian Islamic Cultural Centre NSW
Australian Islamic House (AIH) NSW
Australian Islamic Mission (AIM) NSW
Australian Islamic Museum VIC
Australian Muslim Women NSW
Australian Youth Community Centre VIC
Bankstown Masjid (IFAM) NSW
Bendigo Islamic Community Centre VIC
Benevolence VIC

Schedule 1: List of signatories to this submission

Blacktown Mosque NSW
Board of Imams VIC (BOIV)
Bosnian Islamic Council NSW
Brotherhood Gym NSW
Carramar Mosque NSW
Centre for Islamic Thought and Education SA
Community Academy NSW
Council of Imams NSW
Council of Imams QLD
Council of Imams SA
Council of Imams WA
CYC Campbelltown Youth Centre NSW
Daar Al Muddathir NSW
Daar Ibn Abbas NSW
Dar Alarqam NSW
Dawah Centre WA
Deccan Australian Welfare Association NSW
Dee why Masjid NSW
East Turkistan Australian Association SA
Elssiddiq Heidelberg Mosque VIC
Essence of Life, Wollongong NSW
FAMSY VIC
Fawkner Masjid VIC
FITYAH NSW
Furqan Islamic Association of Western Australia
Gippsland Australian Muslim Community Inc VIC
GIYC, Global Islamic Youth Centre, Liverpool NSW
Granville Youth Association NSW
Green Valley Mosque NSW
Greenacre Mussallah NSW
Guildford Mosque NSW
Gungahlin Mosque ACT
Hills District Muslim Society (HDMS) NSW
Hume Islamic Youth Centre - HIYC VIC
ICWA Islamic Centre Western Australia
IERA VIC
IISCA - Islamic Information & Support Centre Australia VIC

Schedule 1: List of signatories to this submission

IMCG Dandenong VIC
Indonesian Muslim Community of Victoria VIC
Introduction to Islam Foundation NSW
IPDC VIC
Iqra'Academy WA
IQRO NSW
Iraqi Muslim Association NSW
Islamic Association of Monash Mosque VIC
Islamic Association of Western Suburbs Sydney NSW
Islamic Council of Christmas Island CI
Islamic Council of NT
Islamic Council of QLD
Islamic Council of VIC (ICV)
Islamic Council SA
Islamic Council WA
Islamic Education and Welfare Association of Dandenong Inc VIC
Islamic information centre SA
Islamic Malay Australian Association (NSW) NSW
Islamic Practice and Dawah Circle NSW
Islamic Schools Association of Australia NSW
Islamic Society of Darwin NT
Islamic Society of Geelong VIC
Islamic society of Gold Coast QLD
Islamic Society of Melbourne Eastern Region VIC
Islamic Society of Queanbeyan NSW/ACT
Islamic Society of SA
Islamic Society of Victoria
Islamic Women Association of Australia QLD
Islamic Women's Welfare Association (IWWA) NSW
Islamophobia Register Australia
Kuraby mosque QLD
Lebanese Muslim Association
Madinah (Mercy Mission) VIC
Malaysian Muslim Solidarity (ISMA). NSW
Markaz Imam Ahmad NSW
Masjid Al-Sunnah NSW
Masjid Alnoor NSW
Masjid Alsalam NSW
Masjid As Salam, Berkeley NSW
Masjid Ibrahim WA

Schedule 1: List of signatories to this submission

MCYAS - Minchinbury Mosque NSW
MLN (Muslim Legal Network) VIC
Muslim Charity Community of WA
Muslim Defence League WA
Muslim Legal Network (MLN) NSW
Muslim Women Association SA
Muslim Women Association (MWA) NSW
Muslim Women Welfare and Advocacy WA
Muslim Youth Support Centre Western Australia
MyCentre VIC
National Zakat Foundation NSW
Newcastle Mosque NSW
Newport Mosque VIC
Noorul Islam Society WA
Onepath NSW
Palmerston Mosque Darwin NT
Parramatta Islamic Society NSW
Peace International WA
Perth Mosque WA
Pillars Of Guidance Community Center VIC
Quakers Hill NSW
Qubaa Mosque NSW
Rockhampton Mosque QLD
Roselands Mosque NSW
Slacks creek mosque QLD
Somali Muslim Association NSW
Spence Mosque ACT
Sydney City Masjid NSW
Tasmanian Muslim Association
Tempe Mosque NSW
Toowoomba mosque QLD
Townsville Islamic Society QLD
UMA Centre NSW
United Muslim Migrants Association VIC
United Muslims NSW Council
United Muslims of Brisbane QLD
United Sri Lankan Muslim Association of Australia VIC
USMAA VIC
Werribee Islamic Centre VIC

Schedule 2: Analysis of Existing Laws

Prohibitions on religious hate speech (including religious vilification) in Commonwealth, state and territory laws

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case Law | Commentary |
|--------------|------------------------------|---|--|--|--|
| Cth | N/A | <p>Criminal Code Act 1995 Section 80.2A – Urging violence against groups ...</p> <p>(2) A person (the first person) commits an offence if: (a) the first person <u>intentionally urges another person, or a group, to use force or violence</u> against a group (the targeted group); and (b) the first person does so <u>intending that force or violence will occur</u>; and (c) the targeted group is distinguished by race, <u>religion</u>, nationality, national or ethnic origin or political opinion. Penalty: Imprisonment for 5 years</p> <p>Section 80.2B – Urging violence against</p> | <p>Racial Discrimination Act 1975 Section 18C – Offensive behaviour because of race, colour or national or ethnic origin</p> <p>(1) It is unlawful for a person to do an act, otherwise than in private, if: (a) the act is reasonably likely, in all the circumstances, to <u>offend, insult, humiliate or intimidate</u> another person or a group of people; and (b) the act is done because of the race, colour or national or <u>ethnic origin</u> of the other person or of some or all of the people in the group.¹</p> | <p><i>Jones v Toben</i> [2002] FCA 1150</p> <p>The Federal Court held that a website which contained Holocaust denial material contravened section 18C of the Racial Discrimination Act as the publication of that material was reasonably likely to offend and insult Australian Jewish</p> | <p>As it currently stands, Australian Muslims do not fall within the scope of the <i>Racial Discrimination Act</i> as the legislation does not extend to religion. Accordingly, this Act does not provide any protection to Australian Muslims against vilification based on their religious identity.</p> <p>Meanwhile, limited protections <i>have</i> been afforded to Australians of Jewish faith because the Jewish faith was</p> |

¹ The courts have found certain religious groups, such as Jewish people, have a common ‘ethnic origin’, and therefore fall within the protections under the Racial Discrimination Act (see *Miller v Wertheim* [2002] FCAFC 156). It has not been yet been judicially determined whether other religious groups, including Muslims and Sikhs, fall within the protections of the Racial Discrimination Act.

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
|--------------|------------------------------|--|--|----------|--|
| | | <p>members of groups</p> <p>...</p> <p>(2) A person (the first person) commits an offence if:</p> <p>(a) the first person <u>intentionally urges another person, or a group, to use force or violence</u> against a person (the targeted person); and</p> <p>(b) the first person does so <u>intending that force or violence will occur</u>; and</p> <p>(c) the first person does so because of his or her belief that the targeted person is a member of a group (the targeted group); and</p> <p>(d) the targeted group is distinguished by race, <u>religion</u>, nationality, national or ethnic origin or political opinion.</p> <p>Penalty: Imprisonment for 5 years.</p> <p>80.3 – Defence for acts done in good faith</p> <p>(1) Subdivisions B and C, and sections 83.1 and 83.4, do not apply to a person who:</p> <p>...</p> <p>(c) urges in good faith another person to attempt to lawfully procure a change</p> | | people. | <p>recently viewed to originate from a singular ethno-religious group.</p> <p>The criminal provisions of s80.2A and B appear to have never been used in a prosecution despite many examples of incitement to violence being shared in the public domain. These provisions are widely regarded as un-useable and unfit for deterring incitement to violence. This criminal law also only applies to urging violence. As the Attorney-General stated, our criminal laws need to be fit to deter incitement to hatred and violence.</p> |

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| | | <p>to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country; or</p> <p>(d) points out in good faith any matters that are producing, or have a tendency to produce, feelings of ill-will or hostility between different groups, <u>in order to bring about the removal of those matters</u>; or</p> <p>(e) does anything in good faith in connection with an industrial dispute or an industrial matter; or</p> <p>(f) publishes in good faith a report or commentary about a matter of <u>public interest</u>.</p> | | | |
| ACT | <p><i>Discrimination Act 1991</i> Section 67A – Unlawful vilification</p> <p>(1) It is unlawful for a person to <u>incite hatred toward, revulsion of, serious contempt for, or severe ridicule of</u> a person or group of people on the ground of any of the following, other than</p> | <p><i>Criminal Code 2002</i> Section 750 – Serious vilification</p> <p>(1) A person commits an offence if—</p> <p>(a) the person <u>intentionally</u> carries out an act; and</p> <p>(b) the act is a <u>threatening act</u>; and</p> <p>(c) the person is <u>reckless</u> about whether the act <u>incites hatred toward, revulsion of, serious contempt for, or severe ridicule of</u>, a person or group of people on the</p> | N/A | N/A | <p>This jurisdiction offers protection against vilification on the basis of <u>religious conviction</u> which includes conduct towards the Muslim community on both a civil and criminal basis.</p> <p>A question remains as to the scope of “religious conviction” and whether</p> |

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
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| | <p>in private: ... (e) race (f) <u>religious conviction</u></p> | <p>ground of any of the following: ... (v) race (vi) <u>religious conviction</u>; ... and (d) the act is done other than in private; and (e) the person is reckless about whether the act is done other than in private. Maximum penalty: 50 penalty units.</p> | | | <p>it extends to religious identity and activity (for instance, wearing a hijab).</p> |
| NSW | N/A | <p>Crimes Act 1900 Section 93Z – Offence of publicly threatening or inciting violence on grounds of race, <u>religion</u>, sexual orientation, gender identity or intersex or HIV/AIDS status</p> <p>(1) A person who, by a public act, <u>intentionally or recklessly threatens or incites violence</u> towards another person or a group of persons on any of the following grounds is guilty of an offence: ... (a) the race of the other person or one or more members of the group (b) that the other person has, or one or</p> | <p>Anti-Discrimination Act 1977 Section 20C – Racial vilification unlawful</p> <p>(1) It is unlawful for a person, by a public act, to <u>incite hatred towards, serious contempt for, or severe ridicule of</u>, a person or group of persons on the ground of the race of the person or members of the group. (2) Nothing in this section renders unlawful: (a) a fair report of a public act referred to in subsection (1), or (b) a communication or the</p> | N/A | <p>The <i>Anti-Discrimination Act</i> does not offer any protection to the Australian Muslim community on the basis of their religious identity. The Act protects against discrimination on the basis of race, including colour, nationality, descent and ethnic, <u>ethno-religious or national origin</u>, sex, including pregnancy and breastfeeding, marital or domestic status,</p> |

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
|--------------|------------------------------|---|---|----------|--|
| | | <p>more of the members of the group have, a <u>specific religious belief or affiliation</u>, ...</p> <p>Maximum penalty: (a) in the case of an individual— 100 penalty units or imprisonment for 3 years (or both), or (b) in the case of a corporation— 500 penalty units.</p> | <p>distribution or dissemination of any matter on an occasion that would be subject to a defence of absolute privilege (whether under the <i>Defamation Act 2005</i> or otherwise) in proceedings for defamation, or (c) a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.²</p> | | <p>disability, homosexuality, age, transgender status, and carer's responsibilities.</p> <p>There is no legal recourse for acts of vilification against a religious group, such as Australian Muslims. Protection under this Act is confined to race or ethno-religious. In <i>Ekeruawu</i>, the Tribunal did not accept the applicant's argument that Muslims constituted an ethno-religious group in Australia.</p> <p>At a criminal level, legislation is confined to conduct which is either a</p> |

² In NSW, Jewish people have been found to constitute a race for the purposes of section 20C of the *Anti-Discrimination Act 1977* (*Droga v Birch* [2017] NSWADTAP 22). By contrast, it has been held that Muslims are not a race by reason of a common ethnic or ethno-religious origin, and are therefore not protected by this provision (*Ekeruawu v Nine Network Australia Pty Limited* [2019] NSWCATAD 29 (15 February 2019)).

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
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| | | | | | public act and incites violence. There is no protection in respect of vilification on the grounds of religion in New South Wales. |
| NT | N/A | N/A | N/A The Northern Territory recently consulted on introducing anti-vilification laws prohibiting offensive conduct on the basis of race, religious belief, disability, sexual orientation, gender identity and intersex status as part of the Modernisation of the Anti-Discrimination Act project. ³ | N/A | This jurisdiction currently has no religious vilification provisions at all and therefore no safeguards or recourse for Australian Muslims against the incitement of hatred and violence. |
| Qld | Anti-Discrimination Act 1991 Section 124A – Vilification on the grounds of race, religion, sexuality or gender | Anti-Discrimination Act 1991 Section 131A – Serious racial and religious vilification (1) A person must not, by a public act, knowingly or recklessly incite hatred | N/A | <i>Deen v Lamb</i> [2001] QADT 20 (8 November 2001) The Queensland | This jurisdiction has both civil and criminal protections for discrimination and vilification on the grounds of religion. |

³ <https://justice.nt.gov.au/attorney-general-and-justice/law-reform-reviews/published-reports-outcomes-and-historical-consultations/historical/2018/discussion-paper-modernisation-of-the-anti-discrimination-act>

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
|--------------|--|--|--|---|------------|
| | <p>identity unlawful</p> <p>(1) A person must not, by a public act, <u>incite hatred towards, serious contempt for, or severe ridicule</u> of, a person or group of persons on the ground of the race, <u>religion</u>, sexuality or gender identity of the person or members of the group.</p> <p>(2) Subsection (1) does not make unlawful—</p> <p>(a) the publication of a fair report of a public act mentioned in subsection (1); or</p> <p>(b) the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or</p> <p>(c) a public act, done</p> | <p><u>towards, serious contempt for, or severe ridicule</u> of, a person or group of persons on the ground of the race, <u>religion</u>, sexuality or gender identity of the person or members of the group in a way that includes—</p> <p>(a) <u>threatening physical harm</u> towards, or towards any property of, the person or group of persons; or</p> <p>(b) <u>inciting others to threaten physical harm</u> towards, or towards any property of, the person or group of persons.</p> <p>Maximum penalty—</p> <p>(a) for an individual—70 penalty units or 6 months imprisonment; or (b) for a corporation—350 penalty units.</p> | | <p>Anti-Discrimination Tribunal held that statements concerning Muslims and the Koran which were expressed in an electioneering pamphlet by a candidate in a federal election did not constitute religious vilification under section 124A(1) as the candidate did not intend to incite hatred or contempt but rather wanted to let the electors know his opinions on political matters (invoking the defence in section 124A(2)(c)).</p> | |

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
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| | reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter. | | | | |
| SA | N/A | N/A | <p><i>Racial Vilification Act 1996</i> Section 4 – Racial vilification</p> <p>A person must not, by a public act, <u>incite hatred towards, serious contempt for, or severe ridicule of</u>, a person or group of persons on the ground of their <u>race</u> by— (a) <u>threatening physical harm</u> to the person, or members of the group, or to property of the person or members of the group; or (b) <u>inciting others to threaten physical harm</u> to the person, or members of the group, or to property of the person or members of the group.</p> | N/A | <p>This jurisdiction fails to prohibit religious discrimination or vilification, due to the lack of civil or criminal provisions.</p> <p>The current Act relates only to conduct on the ground of race and thus does not offer any protection to the Australian Muslim community on the basis of their religious identity .</p> |

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
|--------------|------------------------------|---------------------------------|---|----------|------------|
| | | | <p>Maximum penalty: If the offender is a body corporate—\$25 000. If the offender is a natural person—\$5 000, or imprisonment for 3 years, or both.⁴</p> <p><i>Civil Liability Act 1936</i> Section 73 – Racial victimisation</p> <p>(1) In this section—act of racial victimisation means a public act <u>inciting hatred, serious contempt or severe ridicule</u> of a person or group of persons on the ground of their <u>race</u> but does not include— (a) publication of a fair report of the act of another person; or (b) publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or</p> | | |

⁴ Section 4 of the *Racial Vilification Act 1996* and section 73 of the *Civil Liability Act 1936* define “race” to mean the “nationality, country of origin, colour or ethnic origin of the person or of another person with whom the person resides or associates”. It has not yet been considered whether certain ethno-religious groups fall within the protections of these Acts.

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
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| | | | <p>(c) a reasonable act, done in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest (including reasonable public discussion, debate or expositions);</p> <p>...</p> <p>(2) An act of racial victimisation that results in detriment is actionable as a tort by the person who suffers the detriment.</p> | | |
| Tas | <p><i>Anti-Discrimination Act 1998</i> Section 19 – Inciting hatred</p> <p>A person, by a public act, <u>must not incite hatred towards, serious contempt for, or severe ridicule of</u>, a person or a group of persons on the ground of –</p> <p>...</p> <p>(a) the race of the person or any member of the</p> | N/A | <p><i>Anti-Discrimination Act 1998</i> Subsection 17(1) – Prohibition of certain conduct and sexual harassment</p> <p>(1) A person must not engage in any conduct which <u>offends, humiliates, intimidates, insults or ridicules</u> another person on the basis of an attribute referred to in section 16(e), (a) [<u>race</u>], (b), (c), (d), (ea), (eb) and (k), (f), (fa), (g), (h), (i) or (j) in circumstances in which a reasonable person, having regard to all the circumstances,</p> | N/A | The <i>Anti-Discrimination Act</i> only offers civil protection as seen in <i>Youssef v Khani</i> [2006] TASADT 8, where the Anti-Discrimination Tribunal of Tasmania ordered the Respondent to publish a written apology or if not received, pay the Complainant the sum of \$1500 in damages. This order was made in relation to comments |

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| | <p>group ... (d) the <u>religious belief or affiliation or religious activity</u> of the person or any member of the group; or ...</p> | | <p>would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.</p> | | <p>that were considered to incite hatred. However, an offence of criminal nature would not offer Australian Muslims any protection at all in this jurisdiction.</p> |
| Vic | <p><i>Racial and Religious Tolerance Act 2001</i> Section 8 – Religious vilification unlawful</p> <p>(1) A person must not, on the ground of the <u>religious belief or activity</u> of another person or class of persons, engage in conduct that <u>incites hatred against, serious contempt for, or revulsion or severe ridicule of</u>, that other person or class of persons.</p> | <p><i>Racial and Religious Tolerance Act 2001</i> Section 25 – Offence of serious religious vilification</p> <p>(1) A person (the offender) must not, on the ground of the <u>religious belief or activity</u> of another person or class of persons, <u>intentionally engage in</u> conduct that the offender knows is likely— (a) to <u>incite hatred</u> against that other person or class of persons; and (b) to <u>threaten, or incite others to threaten, physical harm</u> towards that other person or class of persons or the property of that other person or class of persons. Penalty: In the case of a body corporate, 300 penalty units; In any other case, imprisonment for 6 months or 60 penalty</p> | <p><i>Racial and Religious Tolerance Act 2001</i> Section 7 – Racial vilification unlawful</p> <p>(1) A person must not, on the ground of the <u>race</u> of another person or class of persons, engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.</p> <p>Section 24 – offence of serious racial vilification</p> <p>(1) A person (the offender) must not, on the ground of the race of another person or class of persons,</p> | <p><i>Catch the Fire v Islamic Council of Victoria Inc</i> [2006] VSCA 284.</p> <p>This case concerned statements about Islam made by Catch the Fire Ministries in a seminar, their newsletter and website. While the court held that the original decision had to be remade by VCAT (and it was ultimately</p> | <p>This jurisdiction offers the most secure protection for the Australian Muslim community from both religious discrimination and religious vilification, by way of a separate Act introduced ‘to promote racial and religious tolerance by prohibiting certain conduct involving the vilification of persons on the ground of race or religious belief or activity’ and ‘to provide a means of redress for the victims of racial or religious</p> |

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
|--------------|------------------------------|--|--|---|-----------------------|
| | | <p>units or both.</p> <p>(2) A person must not, on the ground of the <u>religious belief or activity</u> of another person or class of persons, <u>knowingly engage in conduct with the intention of inciting serious contempt for, or revulsion or severe ridicule of</u>, that other person or class of persons.</p> <p>Penalty: In the case of a body corporate, 300 penalty units; In any other case, imprisonment for 6 months or 60 penalty units or both.</p> | <p>intentionally engage in conduct that the offender knows is likely—</p> <p>(a) to incite hatred against that other person or class of persons; and</p> <p>(b) to threaten, or incite others to threaten, physical harm towards that other person or class of persons or the property of that other person or class of persons.</p> <p>Penalty: In the case of a body corporate, 300 penalty units; In any other case, imprisonment for 6 months or 60 penalty units or both.</p> <p>(2) A person (the offender) must not, on the ground of the race of another person or class of persons, intentionally engage in conduct that the offender knows is likely to incite serious contempt for, or revulsion or severe ridicule of, that other person or class of persons.</p> <p>Penalty: In the case of a body corporate, 300 penalty units; In</p> | <p>settled), the judges stated a number of principles for interpreting vilification. These include that intention is irrelevant for the purposes of section 8 and that vilification is determined by the effect it has on an ordinary member of the class to whom the conduct was directed (see at last page).</p> <p><i>Cottrell</i> case – Blair Cottrell and two other members of the United Patriot’s Front were convicted of serious religious</p> | <p>vilification’.</p> |

| Jurisdiction | Civil provisions (religious) | Criminal provisions (religious) | Other protections (eg other relevant attributes) | Case law | Commentary |
|--------------|------------------------------|---------------------------------|---|---|---|
| | | | any other case, imprisonment for 6 months or 60 penalty units or both. | vilification under s 25 of the RRT for staging a mock beheading to protest the building of a mosque. The case is subject to appeal. | |
| WA | N/A | N/A | <p><i>Criminal Code Act 1913</i> Section 77 – Conduct intended to incite racial animosity or racist harassment</p> <p>Any person who engages in any conduct, otherwise than in private, by which the person <u>intends to create, promote or increase animosity towards, or harassment of, a racial group</u>, or a person as a member of a racial group, is guilty of a crime and is liable to imprisonment for 14 years.</p> <p>Section 78 – Conduct likely to incite</p> | <p><i>O’Connell v The State of Western Australia</i> [2012] WASCA 96 (4 May 2012)</p> <p>O’Connell was sentenced for 3 years imprisonment for six charges of racial vilification under the WA laws (upheld on appeal in 2012) relating to posting footage</p> | <p>There is no particular civil or criminal provision in this jurisdiction which protects the Australian Muslim community from vilification.</p> <p>As per the <i>Criminal Code</i>, reference to a racial group does not extend to Australian Muslims as a group nor as individuals. The Australian Muslim community is not covered by the term ‘race’ or ‘ethnic origins’</p> |

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|--------------|------------------------------|---------------------------------|--|--|---|
| | | | <p>racial animosity or racist harassment</p> <p>Any person who engages in any conduct, otherwise than in private, that is <u>likely to create, promote or increase animosity towards, or harassment of, a racial group</u>, or a person as a member of a racial group, is guilty of a crime and is liable to imprisonment for 5 years.⁵</p> | <p>on the internet of himself insulting a Jewish man and giving an anti-Semitic speech in a public space in Perth; as well as in relation to an altercation between himself and two Jewish men outside a 'Friends of Palestine' rally.</p> | <p>and therefore are not protected from dehumanisation and demonisation on the basis of their religion.</p> |

Summary:

Four jurisdictions have civil religious vilification provisions: ACT, Queensland, Tasmania and Victoria. NSW has a civil vilification provision based on race, which includes ethnic, national or ethno-religious origin (found to include groups like Jews or Sikhs, but not Muslims).

Two jurisdictions also have criminal religious vilification provisions: ACT and Queensland. Again, NSW has a criminal vilification provision based on race.

NT, SA and WA do not prohibit religious vilification. SA prohibits vilification on the basis of race and WA on the basis of 'racial group' (both have been found to include Jewish people). There are currently no vilification protections in the NT.

The Commonwealth has a criminal offence for vilification on the grounds of religion, and a civil (non-vilification) offence on the grounds of race, colour or national or ethnic origin (again, found to include Jewish people).

⁵ 'Racial group' is defined in section 78 of the *Criminal Code Act 1913* to mean "any group of persons defined by reference to race, colour or ethnic or national origins".

Western Australian courts have held that vilification against Jewish people constitutes vilification of a racial group for the purposes of this Act (see, *O'Connell v The State of Western Australia* [2012] WASCA 96 (4 May 2012)).