



AUSTRALIAN MUSLIM ADVOCACY NETWORK

**COUNTER-TERRORISM LEGISLATION AMENDMENT (PROHIBITED HATE
SYMBOLS AND OTHER MEASURES) BILL 2023**

**SUBMISSIONS ON BEHALF OF THE AUSTRALIAN MUSLIM ADVOCACY
NETWORK**

1. ABOUT AMAN

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.

2. OVERVIEW

2.1 Welcomed tone and intention

AMAN welcomes the tone and intention the Attorney General invoked in introducing the Bill. He stated,

[T]he Government recognises the important distinction between Islamic State, which is a terrorist organisation with a violent ideology, and the Islamic faith which is deeply respected and valued as part of Australia's multicultural society. The Government condemns Islamophobia and stands with the Australian Muslim community in opposition to terrorism in all its forms. Islamic State continues to incite and carry out violent acts against Muslims and non-Muslim religious minorities within the region and globally.

The Attorney-General also emphasised his commitment to have Australia stand against Nazi ideology, an intention we fully support.

2.2 Bill does not do justice to its intention

The *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023* ('the Bill') seeks to introduce Amendments to the *Criminal Code Act 1995* which would largely bolster the current framework of counter-terror provisions within the Act by

- introducing new offences,
- increasing maximum penalties and
- removing the sunset clause on the proscription status of terrorist organisations - an essential safeguard in the current framework.

Unfortunately, the Bill does not do justice to the stated goals of the Attorney General.

(a) The Bill ignores the core problem

Australian counterterrorism law already clearly stands against Islamic State (IS) ideology. For victims of IS acts of terrorism, slavery (including sexual slavery) and genocide, there is no doubt that Australia condemns IS as a repugnant ideology and has no tolerance for IS activity in Australia.

During the life of Australia's terrorism laws, law enforcement and prosecutors have rarely considered racist nationalism and Nazism to be ideologies that motivate terrorism.

Rather than deal with this problem, the Bill creates a new class of offences beneath terrorism for violent extremism.

(b) The Bill doesn't align with international law on hate speech

The recent spike in the use and appearance of Nazi symbols in the public discourse is very concerning because of their clearly repugnant historical context. AMAN agrees, in principle, with attempts to outlaw hate symbols, where it is essential to protect the psychological security of Australians.

A hate crime framework is preferable for Nazi symbols because various hate actors use them and cannot be linked to a specific terrorist organisation.

The current drafting, however, could be improved to more accurately reflect international standards.

(c) The Bill doesn't give effect to the intention to distinguish between IS and Islam

To give effect to the Attorney-General's intention to make the important distinction between the Islamic State (IS) and the Islamic faith, the Bill would remove the category of 'religious cause' or 'religiously motivated' terrorism. Authorities must begin to refer to Islamic State as ideologically or politically motivated or simply as terrorism.

Practically speaking, the stigmatisation, alienation of the Muslim community and amplification of IS narratives is illogical and unethical. From a legal human rights perspective, it is an unnecessary and ineffective law that misleads the Australian public as to the role of Islam in violent radicalisation. Research shows that religious literacy is the solution, not the problem.

(d) The current system has counterproductive features. This Bill doesn't recognise that; but continues to expand its approach.

Our counterterrorism 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.

(i) Disengagement from a commitment to violent ideology is possible

Terrorism law wrongly assumes that social disengagement from violent beliefs is impossible.¹ It violates various human rights conventions to which Australia is a signatory by denying diversion, mental health, rehabilitation and reintegration opportunities.

(ii) Double standards diminish social cohesion and reinforce white supremacy

Different policing and sentencing standards apply depending on whether a person is deemed 'ideologically or religiously radicalised'. However, the patterns of prosecutions over the past twenty years indicate that Muslims, including Muslim teenagers, continue to be seen as radicalised and untreatable. In contrast, the driving ideologies of non-

¹ Refer to forthcoming research from Victoria University carried out with the involvement of the Board of Imams Victoria.

Muslims are presumed to be less engrained and violence-producing.² Those persons are charged with offences *other* than planning terrorism. Therefore, there is full consideration for mitigating circumstances such as autism, pre-existing trauma, young age, lack of harm caused, good behaviour while on bail and scope for rehabilitation. Those factors cannot be considered in terrorism planning cases because of the strict parameters around terrorism sentencing.

(iii) Early help-seeking must be encouraged

Early criminalisation can accelerate a transition to violent action. The severity of this regime traumatises, terrifies and brutalises vulnerable community members and discourages early reporting to access support.

² See for example: Muslim cases: [Queensland police declined father's requests for help before son was shot dead, inquest told | Queensland | The Guardian](#); Teen 'terrorist' defence lawyers stunned by prosecutor move, The Advertiser (17 August 2022); Non-Muslim cases: [Teenager accused of plotting mass killing was arrested in Adelaide CBD - ABC News](#); [Far-right group member Patrick Patmore sentenced to more than three years' home detention over extremist material - ABC News](#); [Adelaide man who made 'Mother of Satan' explosives eligible for parole within months - ABC News](#)

3. RECOMMENDATIONS

3.1 AMAN recommends the Australian Government deals with the core of the problem. It can effectively respond to Nazism, racist nationalism, and other forms of violent extremism that violently deny Australia's cultural and religious diversity through:

- (a) Amendment to the terrorist act definition to remove the motive element which provides a terrorist act is intended to advance a political, ideological or religious cause. This amendment will help to ensure racist nationalists and Nazis are treated in line with community expectations under existing criminal law. It will
 - (i) **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.
 - (ii) **Reduce arbitrary implementation:** The overwhelming view from human rights lawyers and the United Nations Security Council is that a motive element leads to the arbitrary implementation of terrorism law, where some ideologies are treated as violent, and others are not.
 - (iii) **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.
 - (iv) **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.
- (b) Reviewing existing counterterrorism laws to align them with general criminal law and general sentencing principles, allowing for individual assessment and short and long-term community safety to be considered. Currently, all mitigating factors are discounted in terrorism sentencing in favour of a greater emphasis on general deterrence.
- (c) Reviewing the role and practice of police through a health and community-based lens. There is a genuine perception within the Muslim community that brutal forms of policing and deprivation of liberty based on prejudicial suspicion are designed to isolate and break people and increase their transition to violence, which is then characterised as

terrorism-related, further justifying to the public more brutal policing of more Muslim youth. Whether this is the intention or simply an unintended consequence, it is a matter that requires urgent attention.

- (d) Addressing harmful behaviour in the public information environment by corporations, whether traditional or social media (rather than locating the burden on the community and police):
 - (i) 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**.
 - (ii) 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.
 - (iii) 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).

3.2 AMAN supports Professor Katharine Gelber's recommended improvements to the new offence regarding prohibited symbols to adjust the harm threshold to reflect international law under the Convention on the Elimination of Racial Discrimination.

3.3 AMAN does not support the proposed ban of the 'Islamic State Flag' and those related clauses, including the reference to 'Global Jihadist ideology'.

3.4 AMAN does not support the proposed new offences in relation to accessing, transmitting, soliciting, possessing or controlling violent extremist material.

3.5 While AMAN does not support these new violent extremist material offences mentioned in para 3.4, we support the requirement for Attorney General consent when prosecuting a minor and believe that guard-rail should be implemented immediately in relation to existing terrorism offences, which disproportionately impact children in our community.

3.6 AMAN supports the redrafting of the definition of 'advocates' in subsection 80.2C(3) (terrorism advocacy). However, we don't support the increased maximum penalty.

4. DISCUSSION

4.1 'IS Flag' Ban

(a) This proposal was introduced without a case for its need. The proposed ban is **not necessary** because:

(i) Terrorism laws effectively discourage and condemn the display of Islamic State material, including glorification or support (see section 80.2C Terrorism advocacy). The threat of long-term imprisonment, terrorism investigation, detention and monitoring are a strong deterrent, as the public knows that IS-related activity has been comprehensively treated as terrorism.

(ii) Data published by NSW Police suggests that such an aggressive statutory campaign against the 'IS flag' (which contains the *shahada*) is difficult to justify. 'The number of recorded displays of the flag peaked at 142 in 2015, dropping to 45 in 2017, 22 in 2019, and persisting in smaller numbers this year. Police recorded eight relevant reports or events in 2020 and the same again so far [in 2021]' (emphasis added)³. The data demonstrates a dwindling and small number of incidents that the new offence would capture.

(iii) Islamic scholar, sociologist, and Islamic education expert Professor Mohamad Abdalla notes:

The *shahada* constitutes the first and most fundamental pillar of Islam. It refers to the two testimonies of faith, namely "There is no god but Allah [God] and Muhammad is the Messenger of Allah." Every Muslim, male or female, must believe in it... The *Shahada* and the extended finger are as old as Islam itself... given the centrality of the *shahada* in Islam and among Muslims, it seems unlikely that the use of the *shahada* increased in use since its adoption by Islamic State. As of 2010, there were an estimated 1.6 billion Muslims around the world, all of whom use the *shahada* on a daily basis. Therefore, one can safely conclude that Islamic State's influence on the use and adoption of the *shahada* would be minimal and insignificant, if at all.⁴

(b) The proposed ban is **harmful** because:

³ 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>>.

⁴ Professor Mohamad Abdalla, "Expert Witness Report", 8 April 2019, 6-8.

- (i) The Bill includes things that 'nearly resemble' the Islamic State flag so that it 'is likely to be mistaken or confused'⁵ with the Islamic State flag. Islamic State, however odious their violent ideology and vehemently opposed by the Muslim community, have adopted in their flag exact words in Arabic, which are of paramount spiritual significance in Islam. The intrinsic contents of the Flag are not hateful.
- (ii) Legislative developments which continually conflate the Islamic testimony of faith, which is of utmost holiness to millions of Muslims all over the world, and criminal activity such as terrorist offences are counter-productive to anti-racism efforts and empower terrorist recruiters' arguments which seek to capitalise on a sense of victimhood experienced by some young Muslims.
- (iii) New provisions would allow police to 'direct' persons they 'reasonably suspect' of displaying prohibited hate symbols in public. This police power would be introduced into a field already marred by confusion and anti-Muslim bias.
- (iv) Many people in our community are deflated and burned out by the institutional conflation of our religion and terrorism. The Attorney General's remarks offer positive intentions, but the introduction of this ban could increase false reports to the national security hotline and police contact with our community. The fear of this prospect is genuine and well-founded.
- (v) It requires a degree of knowledge of the Arabic language. It stands to reason that an ordinary person cannot tell the difference between an 'IS flag' and other religious materials with Arabic script possessed or displayed by an Australian Muslim.
- (vi) Similar provisions to that proposed are found within the *German Criminal Code* and focus on prohibiting Nazi symbols.⁶ In Germany, prohibiting certain symbols has the further purpose of mitigating habituation with such symbols. German courts '... ruled that concerning the danger of habituation, selling buttons with a crossed-out swastika is indictable ...'.⁷ These buttons were sold by anti-fascist parties who protested Nazi ideology. Australia's proposed requisite that the prohibited symbol's display be likely to 'offend, insult, humiliate or intimidate a person who is a reasonable person and a member of a group of persons distinguished by race'⁸ would apply in similar circumstances to

⁵ *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023*, cl 80.2E(d).

⁶ *Criminal Code* (Germany) s 86a [tr Michael Bohlander, *Übersetzung des Strafgesetzbuches* (Juris, 2016) 45].

⁷ Andreas Stegbauer, 'The Ban of Right-Wing Extremist Symbols According to Section 86a of the German Criminal Code' (2007) 8(2) *German Law Journal* 173, 182.

⁸ *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023*, cl 80.2H(7).

make the display of anti-terrorism symbols that incorporate Nazi symbols and -particularly- the Islamic State flag an offence due to the flag's incorporation of the *shahada*, a vital text for all Muslims, a crossed-out symbol of which would likely be considered deeply offensive.

(vii) If introduced, the 'IS Flag' will undoubtedly cause additional provisions in police policy and procedure items (training handbooks, guidelines⁹) and public education campaigns. While this might aim to reduce potential harm from its introduction, AMAN is concerned that it may worsen matters.

- (A) This measure is not being introduced into a neutral environment with minimal existing bias.
- (B) The current legal framework already invites police and the legal system to treat our religion as a terrorist motive, mainstreaming anti-Muslim sentiment, bias and misconceptions within law enforcement;
- (C) The relationship between the Muslim community and law enforcement is so damaged, and so few Muslims can safely work in law enforcement that the capability to provide quality training, cultural oversight and improvement is minuscule compared to the need it needs to satisfy.
- (D) The training materials will increase and endorse the conflation of our religion and terrorism. Explaining that Islamic content on the flag reinforces a pre-existing public misconception created by our law that Islam is incompatible with Australia. The takeaway message from any education campaign will be "these people again", "Muslims are a problem", "Islam is synonymous with terrorism"; and
- (E) Heightened concerns about terrorism that are often incorrectly conflated with Islam have been found to destroy the effectiveness of interventions aimed at reducing anti-Muslim prejudice based on knowledge of Muslims and Islam.¹⁰ This defeats our anti-racism efforts.

4.2 References to "Global Jihadist Ideology"

⁹ <https://www.police.nsw.gov.au/about-us/policies-procedures-and-legislation>

¹⁰ Matteo Vergani, Fethi Mansouri and Liliana Orellana, 'Terrorism concern and persistence of negative attitudes towards Islam and Muslims' (2022) 32(6) *Journal of Community & Applied Social Psychology* 1029, 1030.

- (a) The Bill also refers to 'global jihadist ideology' in the defences section and the new offence of trading in prohibited symbols. That term is poorly defined within research and is routinely weaponised by racist nationalists. Racist nationalists may rely on that defence, arguing that a portrayal of Muslims with the 'IS flag' reflects their concern for global jihadist ideology.
- (b) The term is also highly offensive to many Muslims as it uses a sacred Islamic principle ("jihad") and distorts public understanding of Islam. It is also reductive, given the complexity and differences between politically and ideologically motivated groups across the globe. Enshrining this term in law will normalise it for public and media use, causing significant harm to public understanding of Islam and social cohesion.
- (c) The addition of the term 'violent' in front of Jihad does not reduce the negative stigmatisation.
- (d) As these references are linked to the proposed 'IS Flag' ban, they can be removed.

4.3 Violent Extremist Material (VEM)

- (a) The Bill proposes new offences of
 - (i) cl 474.45B related to accessing, transmitting, or soliciting violent extremist material,
 - (ii) cl 474.45C, which relates to possessing or controlling violent extremist material.
- (b) Below, we provide an analysis of s 474.45B that largely applies to 474.45C, given their common structure.
- (c) A comparison of the new offence that the Bill seeks to create at clause 474.45B, with like offences in other jurisdictions, namely the United Kingdom, elucidates the extent to which the Bill supersedes comparable precedent by furthering an already radical anti-terrorism framework.
- (d) Section 58 of the *Terrorism Act 2000* (UK) makes it an offence to collect, record, possess, or to view or access by way of the internet 'information of a kind likely to be useful to a person committing or preparing an act of terrorism'.¹¹ The relevant provisions allow a defence where an individual can prove they did not have the knowledge nor any reason to believe that the document or record contained, or was likely to contain, information of a kind likely to be useful to a person committing or preparing an act of

¹¹ *Terrorism Act 2000* (UK), s 58.

terrorism.¹² Further, downloading or viewing such material mistakenly or without intent would not be an offence.¹³

- (e) Another similar offence that resonates more closely with the Bill's proposed offence is section 2 of the *Terrorism Act 2006* (UK), which prohibits distributing, giving, selling, offering for sale, enabling others to obtain, read, listen to or look at, transmitting or possessing a terrorist publication with the intention of directly or indirectly encouraging or assisting in the commission, preparation or instigation of acts of terrorism.¹⁴ The provisions specify fault elements for individuals whose conduct intentionally or recklessly encourages the 'commission, preparation or instigation of acts of terrorism'¹⁵ or provides 'assistance in the commission or preparation' of acts of terrorism.¹⁶
- (f) Comparatively, the scope of conduct the Bill seeks to prohibit is vast, with some ambiguity. The Bill seeks to outlaw the accessing, transmitting or soliciting by 'using a carriage service ... violent extremist material'¹⁷. The offence applies absolute liability to proving that the material was accessed, transmitted or solicited using a carriage service. There is a qualification that the person intends to access, transmit or solicit the material¹⁸ and that the person is reckless as to whether the material is violent extremist material.¹⁹ Unlike section 2 of the *Terrorism Act 2006* (UK), the fault requirement is that the person intends to access material rather than intentionally or recklessly encourage or assist in the commission, preparation or instigation of acts of terrorism.
- (g) New proposed clause 474.45C requires the person to have the intent to possess or control the material, whereas 474.45B requires the person to have the intent to access, transmit, or solicit the material. In 474.45C, there is strict liability as to whether the material is in the form of data held in a computer or contained in a data storage device. There is absolute liability regarding whether the person used a carriage service to obtain or access the material.
- (h) The scope of the Bill's proposed offence is significantly broader than its UK counterparts. We are concerned that it will stifle the constitutionally

¹² Ibid s 58(3A)(a).

¹³ Explanatory Notes, *Counter-Terrorism and Border Security Act 2019* (UK) Commentary on provisions of Act s 3(36).

¹⁴ *Terrorism Act 2006* (UK), s 2.

¹⁵ Ibid, s 2(1)(a).

¹⁶ Ibid, s 2(1)(b).

¹⁷ Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (Cth) cl 474.45B(1).

¹⁸ Ibid cl 474.45B(2)(a).

¹⁹ Ibid cl 474.45B(2)(b).

enshrined implied right of freedom of political communication and also violates the principles of proportionality and legality.

- (i) The existing domestic criminal law on terrorism within the *Criminal Code Act 1995* (Cth) sets a comparatively higher requisite as to the existence of a link between conduct and terrorist acts than the Bill. While a terrorist act need not be committed nor a specific act planned,²⁰ there is a clear requisite that the possession of a thing, the collection or making of a document, or the commission of an act be connected to the planning or carrying out of terrorist acts. The Bill lacks such a critical association. Instead, accessing, transmitting or soliciting violent extremist material is an offence regardless of whether the material was accessed, transmitted or solicited for the purpose of the planning or carrying out of serious violence, intimidatory acts, extremist acts or terrorist acts.
- (j) The lack of a requisite connection between accessed, transmitted or solicited violent extremist material and the planning or carrying out of extremist acts excessively constrains the accessibility of such material to the public. While created for violent extremist purposes, such materials may be accessed or transmitted for legitimate purposes, such as to increase public or private awareness of terrorist organisations, global events, ongoing conflicts, and human rights abuses. Such material may even be altered and used for artistic purposes in opposition to the original violent extremist purposes of the material. However, this alteration appears to be insufficiently distinguishing for such material as whether its primary purpose is the aversion of intimidatory acts or serious violence is irrelevant as long as the original purpose or one of the material's purposes was prohibited.²¹
- (k) The context in which the violent extremist material is accessed, transmitted or solicited is vitally important to reduce the occurrence of violent radicalisation, serious violence, intimidatory acts, acts of terrorism, and the growth of extremist organisations. Access to violent extremist material is necessary to oppose violent radicalisation, violence, and extremism. It can be fruitful in creating material that, if effectively disseminated, can be a proponent against extremism.
- (l) AMAN submits that the definition provided for violent extremist material (VEM) in clause 474.45A(4) of the Bill is somewhat convoluted and lacks sufficient clarity for members of the public to understand the nature of the material being prohibited. Given the incredible stakes of this offence – the stigma, the risk of criminal charges and deprivation of liberty – **there must be strong public certainty as to what constitutes VEM.** Currently, the definition is as complex and ambiguous as the standard for vilification, which may be justifiable in an arena organised by conciliation processes, declaratory relief and compensation but is not, in any way, justifiable in the criminal arena.

²⁰ See, eg, *Criminal Code Act 1995* (Cth) ss 101.4(3), 101.5(3), 101.6(2).

²¹ *Criminal Code Act 1995* (Cth) cl 474.45A(4).

- (m) This is particularly concerning in relation to journalism and activism from war zones, incidents of police brutality and acts of warfare which can be disseminated for the public interest. Considering the contemporary reliance on freelance journalism in the social media sphere, the Bill would potentially outlaw conduct that seeks to shed light on atrocities and human rights violations, should an individual not be deemed a “journalist” by prosecutorial bodies, the courts or the Bill.

Increased risk for persons with Autism Spectrum Disorder

- (n) Additional issues arise regarding the potential for the proposed offence to result in the disproportionate and unnecessary arrest and charge of individuals with Autism Spectrum Disorder (ASD), manifesting an intense fixation on a special interest.
- (o) Research suggests that individuals with ASD may be at a greater risk of exploitation by extremist groups due to the symptoms of ASD. Forensic psychologist Dr Zeinab Al-Attar, whom the UK Government employs to work in the de-radicalisation of prisoners convicted of terrorism offences, posits that ‘in some individuals with ASD, interests and pre-occupations may take on an obsessional quality, and be pursued repetitively and in pedantic detail’.²²
- (p) This, in turn, creates heightened risk for the individual being charged, as:

Where an individual has developed a terrorism-related circumscribed interest ... this may come to have an obsessional quality that takes the behaviour beyond any pragmatic or indeed operational (terrorist) objective. They may collect large amounts of detail relating to terrorism (i.e. terrorist group/cause or target) and repeatedly watch propaganda, manufacture items, or pursue individuals relating to terrorism. Each instance of access to detailed information, collection of items and pursuit of individuals may constitute unlawful behaviour under Terrorism legislation as well as collectively paint a picture of intense commitment to terrorism. However, each act may not necessarily be linked to a broader or longer-term moral or operational objective. This is not to say that this renders the behaviour less harmful, only that it may be best understood as being driven or at least accentuated by obsessionality, repetition, pedantry for detail and compulsive collective/pursuit, as opposed to evidence of broader or greater ideological objectives or greater operational involvement.²³

²² Zainab Al-Attar, ‘Autism spectrum disorders and terrorism: how different

features of autism can contextualise vulnerability and resilience’, *The Journal of Forensic Psychiatry & Psychology* (2020), 31(6), 926, 937.

²³ Ibid.

- (q) When this research is analysed with the Bill, the risk factor is drastically heightened. The proposed offence would criminalise the individual's behaviour, even without intent to encourage or commit serious violence, intimidatory acts or extremist conduct. Persecution of such individuals would be counter-intuitive, as their special interest makes them more vulnerable. Such radicalisation could occur due to their imprisonment (including on remand) and the development of relationships with dangerous criminals and extremists with similar interests while imprisoned. Extremist groups are well positioned to exploit ASD individuals for their skillset by rewarding their special interest and providing social validation, as noted by Zainab Al-Attar:

... operational terrorist pursuits may be technically highly detailed activities that may be enjoyable and suited to the natural aptitudes of the individual, making them intrinsically appealing. If the individual excels in such pursuits, they may then be socially validated by others and attract co-enthusiasts who share their passion for the detailed, repetitive pursuits and who praise their skill and collections.²⁴

- (r) This special fixation is observed in the case of Patrick Patmore, 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.'²⁵
- (s) There are other cases where Muslims with Autism (diagnosed before or post-trial) are prosecuted or convicted of terrorism conspiracy. Judicial officers have shown a lack of understanding of the relevance of autism to the seriousness of intention, culpability and the scope for rehabilitation.²⁶
- (t) It is unclear whether the proposed new offences will be subject to general sentencing principles or terrorism sentencing principles (the latter, which does not pay substantial regard to mitigating factors). Their placement in the non-terrorism part of the Criminal Code suggests that general sentencing principles will apply. While this might soften some penalties

²⁴ Ibid 938.

²⁵ *R v Patrick Patmore* [2023] SADC (unreported).

²⁶ [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. Compare this to the sentencing of Patrick Patmore, who also has autism, but was charged with non-terrorism offences.

for persons with ASD, it won't mitigate the unnecessary and increased risk of criminalisation.

4.4 Sunset Clause on Proscription of Terrorist Organisation

- (a) The Bill seeks to amend the *Criminal Code Act 1995* (Cth) to remove the three (3) year sunset clause on the proscription of an organisation as a terrorist organisation²⁷ and substitute it with the existing section allowing the AFP Minister to include or remove names and aliases of prescribed terrorist organisations.²⁸ Without a sunset clause, there is no requirement that the AFP Minister take positive action to review the status of an organisation as a terrorist organisation. The subsection allowing listed organisations to make a de-listing application is, under this Bill, the only way a listed organisation may be declared to no longer be a terrorist organisation other than a declaration by the AFP Minister. This is an inadequate substitute for the sunset clause as the subsection only requires that 'the AFP Minister must consider the de-listing application.'²⁹ The power to de-list a terrorist organisation would then be entirely at the discretion of the AFP and require no positive action beyond a consideration of de-listing applications.
- (b) AMAN believes that the Australian Government needs to be transparent about its criteria and consideration of criteria for including organisations on the list. Given the number of self-declared Islamist organisations that are on the list which have no physical connection to Australia (which the Government readily admits), the list appears to operate as more of a foreign policy instrument. Elsewhere, AMAN has raised concerns with the discriminatory two-tier approach to policing and prosecuting terrorism compounded by the proscription list, which does not reflect the true landscape of terrorism.³⁰

²⁷ Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (Cth) sch 4 pt 1.

²⁸ *Criminal Code Act 1995* (Cth) s 102.1AA.

²⁹ *Ibid* s 102.1 (17).

³⁰ AMAN's submission to the Parliamentary Joint Committee on Intelligence and Security on the Review of the 2022 relisting of four organisations as terrorist organisations under the Criminal Code: Islamic State Sinai Province; Islamic State in Libya; al-Qa'ida in the Indian Subcontinent; and al-Qa'ida in the Arabian Peninsula. 27 January 2023 [Sub-3-Australian-Muslim-Advocacy-Network-1.pdf \(aman.net.au\)](https://aman.net.au/Sub-3-Australian-Muslim-Advocacy-Network-1.pdf)

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 develop with input 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.)

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