



# AMAN

AUSTRALIAN MUSLIM ADVOCACY NETWORK

Monday, 3 July 2023

**To: Committee Secretary,  
Parliamentary Joint Committee on Human Rights**

**Re: Inquiry into Australia's Human Rights Framework.**

AMAN makes this submission in support of an Australian Charter of Human Rights.

## **CLOSING THE GAP IN DISCRIMINATION AND VILIFICATION PROTECTIONS**

Australian Muslims cannot access justice through the Australian Human Rights Commission unless a race-based complaint is brought. This is unjust and non-aligned with Australia's treaty obligations. The Commission's approach appears to be based on the NSW case law, which deemed Muslims not to constitute an 'ethnoreligious' group, unlike Jews and Sikhs. Given the scale of racism and bigotry directed at the Australian Muslim community, and the still-looming shadow of the Christchurch mosque massacres carried out by an Australian, this gap in law is egregious. The Albanese Government's election promise to introduce a religious discrimination bill at the national level helps to close that gap. However, every state and territory without these protections must also follow suit.

## **AUSTRALIAN HUMAN RIGHTS ACT**

### ***Driving accountability and improvement in institutions***

An Australian Human Rights Act introduces a **positive obligation** on institutions to consider the impact of their decisions on people. It also deepens the capacity of Australians to respond to unjust or problematic laws.

A complaint must follow a **structured and accountable process**, or it will lead nowhere.

National Action Plans and our electoral system *do not change* **systemic and cultural problems** within institutions. Yet, we have expected those systems to achieve those ends for generations.

Institutions are not naturally incentivised to explore problems that show possible wrongdoing or neglect. Whether related to housing, employment, education, health, or community safety and policing, an Australian Human Rights Act has the potential to provide the structure and incentive for continual improvement by institutions.

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Discrimination laws offer essential protection, but it maintains the lion's share of the burden and risk on the victim, and tends to take a narrow view of the problem.

Take the problem of systemic racism in a tertiary education institution. A complainant was the only person of his cultural background and Islamic faith in a cohort during the peak of Islamophobia, driven by constant ISIS media coverage and conflation of Islam and terrorism. He became aware that people were spreading rumours about him being a terrorist, and raised these concerns with the university. The university did nothing at first, and then approached the issue by suggesting he had a mental illness. The university required him to undergo a psychiatric assessment, which showed he had no mental illness but was in need of greater social inclusion support at his university, which the university continued to ignore. The problems snowballed and his grades declined, leading to eventual exclusion from his course as the course had high academic requirements. Providing direct or indirect discrimination can be very difficult in these scenarios where there is no 'smoking gun' in terms of a racist comment. However, if a positive human rights framework was used, the right to education, and the right to non-discrimination would be considered together. The starting point would be very different – considering whether the university was taking all reasonable and proportionate steps to enable this student to exercise his human rights equally on foot with other students.

It would be fundamentally important that a Human Rights Act apply to actions by publicly funded bodies, including where that action is carried out under a power conferred by statute (for example, law enforcement bodies; involuntary orders made under the mental health legislation; and the actions of corrections officers).

### ***Benefits for Democracy***

Bringing human rights 'to life' in this country will refresh our democracy. In its foreign policy statements, Australia often speaks about upholding the 'rules-based international order.' This messaging falls flat on domestic audiences because we don't take human rights seriously at home. We know about the suffering endured by Australians who are forgotten and even betrayed by institutions supposedly there to care for and protect them.

Establishing a Human Rights Act in Australia would help facilitate dialogue among individuals and communities **with institutions**. It will locate the problem-solving with the responsible decision-makers and knowledge-holders.

Enacting a Federal Human Rights Act would provide individuals with greater clarity and understanding of their rights, enabling them to assert and protect them more effectively. A Federal Human Rights Act would foster greater **access to justice**, which, over time, creates more **trust** in the rule of law.

By clearly defining and promoting human rights standards, such an Act would provide a platform for open and meaningful communication. It would enable individuals to express their

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**grievances and concerns**, facilitating a deeper understanding of the other side's perspectives through pre-conferencing and conciliation. There is evidence of the benefits of civil processes as a form of restorative justice that can reduce future harm by building insight, empathy and mutual understanding.

### ***Protecting Religious Freedom***

An Australian Human Rights Act would enable human rights to be examined together under multiple human rights dimensions. The struggles in recent years to legislate to protect religious freedom have reflected an attempt to improvise in the absence of a federal Human Rights Act. Australia is a proudly pluralist nation in terms of cultures and religions – This core value must be protected at law.

Human rights include the freedom to manifest religion or belief, either individually or in community with others, and in public or private, in worship, observance, practice and teaching (ICCPR, article 18.1). Freedom of religion has both an individual and a collective aspect, under which religious bodies ought to be free to manifest the religious beliefs of their members.<sup>1</sup>

Australia's obligations under articles 18.1 and 19.2 of the ICCPR are to ensure that all Australian laws, including State and Territory laws, do not unjustifiably restrict freedom of religion and freedom of expression. Australia also has obligations under article 18.4 of the ICCPR to have respect for the liberty of parents to ensure the religious and moral education of their children in conformity with their own convictions.

Under article 18.3 of the ICCPR, freedom to manifest one's religion or beliefs may be subject *only* to such limitations as are prescribed by law and are *necessary* to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

An Australian Human Rights Act will emphasise that all rights must be treated with equal importance, and no right should be prioritised at the expense of any other. This foundational principle of human rights law clarifies the relationship between human rights. It recognises that all rights are interconnected and interdependent, and there is no hierarchy of rights in international law.

### **ANTI-DEHUMANISATION STANDARDS**

To give full effect to Australia's commitment to prevent genocide and ban the advocacy of hatred, the Australian Government should consider introducing anti-dehumanisation standards that are integrated across social and traditional media regulation, and

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<sup>1</sup> Nicholas Aroney, 'Freedom of Religion as an Associational Right' (2014) 33 University of Queensland Law Journal 153, 178-181 (available at: <https://ssrn.com/abstract=2507045>); Nicholas Aroney and Patrick Parkinson, 'Associational Freedom, Anti-Discrimination Law and the New Multiculturalism' (2019) 44 Australasian Journal of Legal Philosophy 1, 8-13 (available at: <https://ssrn.com/abstract=3543308>).

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parliamentary codes of conduct and provide additional guidance to judicial officers in applying vilification and discrimination laws. AMAN has published working definitions of dehumanising speech and discourse (including through disinformation).<sup>2</sup>

Much vilification occurs through **media or social media**. Yet, the vilification framework legal continues to hold the burden and risk on the victim, allowing monolithic platforms to externalise the social cost while internalising the profits. The Online Safety Act only addresses hatred directed at individuals, not communities. To support a more preventative approach (known as 'safety by design'), Australia needs to clarify harmful forms of hatred encapsulated by dehumanising language and discourse.

**Yours faithfully,**

**AUSTRALIAN MUSLIM ADVOCACY NETWORK**

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<sup>2</sup> [https://www.aman.net.au/?page\\_id=1425](https://www.aman.net.au/?page_id=1425)

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