

Joint Statement on behalf of Australian Muslim Community

Review of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023

1. Representatives from various organisations have come together to make this statement.
2. At the outset, we acknowledge and support the intent behind the Bill as stated in the Explanatory Memorandum that “*there is no tolerance for the extremist ideologies*” and that certain symbols which promote hatred, instil fear and are used to harass others need to be addressed. However, we hold grave concerns about certain aspects of the Bill and the effects this will have in terms of marginalising the Australian Muslim community, promoting misunderstanding and vilification, and fomenting mistrust within the community relating to police and authorities.
3. The misconceived and harmful approach is at two main levels.
4. **First**, the Bill seeks to prohibit symbols that are inherent aspects of Islamic history and tradition.
5. **Second**, there is a conflation of commonly used religious terms in a manner that continues a pattern of misappropriation and misunderstanding, thereby risking alienating a whole community.
6. As to the first matter, the prohibition of the Islamic State flag has unintended consequences that impact all Australian Muslims. The flag, which the Islamic State has misappropriated, carries important Islamic symbols adopted by the early Muslims. The proposed prohibition relating to the symbols will unjustifiably restrict and marginalise Australian Muslims. Many Australian Muslims have these symbols as adornments in their homes. The colours are also associated with the history of Islam. By proscribing these and inferring some malintent, Australian Muslims' religious freedom and right to outwardly associate with their faith will come under scrutiny. There is the further risk that enforcement agencies will not readily appreciate the distinction and act on an initial assumption of wrong-doing, as the AFP did in 2014 when they stormed a home in Sydney, detained a young man and his parents, and removed a plastic decorative sword decoration with Arabic religious inscriptions on it.
7. Some representatives will also discuss the provisions relating to the ‘religious purpose’ defence. Further, based on counter-narratives research, we believe that any education campaign to address public confusion will amplify and reinforce the conflation, making matters worse. The Bill should proceed on the correct footing rather than seek to curb its ill effects through the operation of inadequate defences and reactionary steps once the action has already been initiated and steps taken by enforcement agencies.
8. As to the second matter, certain terminology of the Bill perpetuates a misunderstanding and misuse of common religious terms.
 - a. For example, the phrase “global jihadist ideology” feeds into the far-right narrative that conflates Islam with violence and aggression. In Islam, the word ‘jihad’ carries multiple meanings, depending on the context and subject matter at hand. ‘Jihad’ is not currently used in any Federal legislation, and it is unclear how Courts will understand and interpret this phrase. In these circumstances, personal bias and a political understanding of the phrase cannot be eliminated from the judicial interpretation process. There is no agreed or precise definition of this term, even among counterterrorism researchers, with some arguing it is reductive and misleading. Putting it into law will normalise its reductive meaning within public discourse.

- b. In a similar vein, the term “Islamic State” (as opposed, or in addition to the Arabic acronym ‘Deash’) is used. For many in the broader community and among enforcement agencies, the use of Islamic terms and phrases to characterise terrorism and other criminal conduct risks creating a bias. Their criminal conduct comes to be associated with the very religion and its adherents.
 - c. The Australian Muslim community has expressed longstanding concern with the term ‘religious cause’ that sits alongside ‘political’ and ‘ideological’ cause in the terrorist act definition. This term has harmfully shaped labels by ASIO and law enforcement when speaking about ISIS, such as ‘religiously motivated terrorism’, ‘Islamic terrorism’, and ‘Jihadist terror’. Our law should not amplify or glamorise the message of terror groups that wish to be known as religious. ISIS is motivated by a violent ideology and political goals, not Islam. This language has unnecessarily shaped public discourse to promote anti-Muslim and anti-Islam sentiment. It is troubling that rather than acknowledging these concerns, the Bill introduces ‘religious cause’ into further contexts, namely the definition of violent extremist material in Schedule 2.
 9. There has been a widespread and devastating experience of many Muslim communities globally, particularly following the terrorist act on 11 September 2001. A study by the Centre for Resilient and Inclusive Societies found that terrorism media coverage destroys the ability of Australian audiences to accept anti-racist messages or education about Muslims or Islam. We do not wish for Australian law to promote this harmful conflation, exposing our community to Islamophobia and anti-Muslim sentiment, and lending authority to the narratives of ISIS and racist groups.
 10. As such, we cannot agree that the Bill, as it is presently framed, is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. Laws which infringe on fundamental freedoms and human rights must be necessary and proportionate to achieve a legitimate end. In our view, the changes are not necessary, particularly given the powerful deterrence of present terrorism laws.
 11. The matters raised have far-reaching effects, which will be harmful and counterproductive in terms of what the Bill seeks to achieve. For instance, it will, in our assessment:
 - a. increase the risk of vilification and targeting of Australian Muslims;
 - b. create an environment of mistrust between the community and enforcement agencies, thereby impacting on existing co-operative relationships;
 - c. undermine the very objective of working together, as a country, to address and confront violent extremism and ideologies.
 12. There are other matters of concern with this Bill that individual organisations can speak to in greater depth. For example, the Bill seeks to introduce new offences in relation to obtaining or being in possession of violent extremist material through a carriage service. Given that recklessness is the fault element, there is a risk that the new offences could catch a person who accidentally comes across violent extremist material on the internet. We urge the Australian Government to exercise caution in expanding criminal laws where terrorism law already covers the relevant criminal conduct. Reform should be made to ensure more consistent implementation of terrorism laws and powers, regardless of the content of a person’s stated beliefs.