

Parliamentary Joint Committee on Human Rights

***Religious Discrimination Bill 2021* and
related bills**

**Submission made by the
Australian National Imams Council**

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Parliament House
CANBERRA ACT 2600

By email: seniorclerk.committees.sen@aph.gov.au /
religionbills@aph.gov.au

1. INTRODUCTION

- 1.1 This joint submission is made on behalf of the Australian National Imams Council (**ANIC**) relating to the *Religious Discrimination Bill 2021 (Bill)*. In making the submission, ANIC has conferred with various Muslim community organisations which are focussed on providing community services and support throughout Australia. ANIC has also had the benefit of feedback provided by Australian Muslims to its various member imams, clerics and Islamic scholars. Accordingly, the issues raised in this submission are reflective of the views prevalent in the Australian Muslim community, including among other Muslim organisations.
- 1.2 ANIC further notes that it was worked collaboratively with various Christian and Jewish organisations, including the Anglican Church Diocese of Sydney and Executive Council of Australian Jewry. It joins with them in supporting the Bill and its criticality in addressing a fundamental deficiency in the protective laws which operate in the pluralistic society of modern day Australia.
- 1.3 In modern day Australia, religious belief and practices are as important and inherent to the identity of people as their race, gender, culture and approaches relating to family and parental responsibilities. Accordingly, people should be free to manifest their religious belief not merely in thought or prayer but in practice and their day to day lives. Australian Muslims continue to be readily identifiable by their names, appearance, dress and attendance at places of worship. Yet, inexplicably, if Australian Muslims are discriminated against based on their religious identity, there is little to no legal recourse. For the most part, there is no recognition nor acknowledgment of the religious aspect of a person's identity at law.
- 1.4 Fundamental to religious freedom is the ability to manifest that religious belief and identify one's religious identity and belief without fear of harassment, vilification or violence to oneself or one's family. Sadly, many Australian Muslims have not had that freedom. The discrimination which they experience threatens their freedom to express their religious identity, creates significant stress for their children and youth, and erodes their sense of security and belonging. The psychological impacts are lasting.

- 1.5 The concept of the Bill offers a critical opportunity to address an urgent and pressing concern held by Australian Muslims and persons of other faiths. This is in a context where, in some States such as NSW, there is no legislative protection against discrimination directed at a person based on their religious identity and belief. As noted in the letter of reference from the Attorney General, the Honourable Michaelia Cash, dated 26 November 2021, the Bill fills “*a gap in the Commonwealth anti-discrimination framework to ensure that all Australians are protected from discrimination on the basis of religious belief and identity*”.
- 1.6 The Bill also represents an important step in implementing a uniform and consistent protection for all religious communities, particularly in a climate of increasing anti-Muslim and anti-religious sentiment directed at persons who are readily identifiable with reference to their religious belief, activities and/or affiliation.
- 1.7 We appreciate the opportunity to make this submission to the Parliamentary Joint Committee in relation to the Bill and look forward to further engaging on the Bill.

2. **THE AUSTRALIAN NATIONAL IMAMS COUNCIL**

- 2.1 ANIC is an umbrella organisation consisting of in excess of 200 Muslim imams, clerics and Islamic scholars representing each Australian State and Territory. ANIC represents the wider interests of the Australian Muslim community. ANIC is recognised by the Federal and State Governments, media and various other community and religious groups as being the central representative body of the Australian Muslim community. It also regularly facilitates collaborative initiatives with other community-based organisations.
- 2.2 ANIC provides religious leadership, rulings and services to the Australian Muslim community by supporting local Islamic organisations, developing educational, social and outreach programs and fostering good relations with other religious communities and the wider Australian society. ANIC has also played a leading role in making a submission on behalf of the Australian Muslim community relating to the earlier iteration of the *Religious Discrimination Bill* which was proposed by the Government during 2019.
- 2.3 Given the above role and objectives of ANIC and its grassroots activities and interactions with the broader Australian Muslim community, it is well placed to make this submission.

3. NO PROTECTION AGAINST DISCRIMINATION ON RELIGIOUS GROUNDS

3.1 It is noted that this inquiry is being undertaken in response to a request from the Attorney-General pursuant to s 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, and therefore the focus of the inquiry is 'any matter relating to human rights' arising from the Bill with a view to considering Australia's international obligations under the treaties and instruments listed in s 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* and the achievement of these. This requires a brief consideration of the existing legislative framework and protections presently offered.

3.2 The existing legislative framework, as reflected in the various federal discrimination laws, prohibits unlawful discrimination.

3.3 Unlawful discrimination is defined in the *Australian Human Rights Commission Act 1986* (Cth) with reference to other related legislation. In summary, the particular grounds of unlawful discrimination include:

- (a) race, colour, descent or national or ethnic origin;
- (b) sex;
- (c) sexual orientation;
- (d) gender identity;
- (e) intersex status;
- (f) marital or relationship status;
- (g) pregnancy or potential pregnancy;
- (h) breastfeeding;
- (i) family responsibilities;
- (j) disability;
- (k) people with disabilities who have a carer, assistant, assistance animal or disability aid; and
- (l) age.

3.4 Also falling within the definition of 'unlawful discrimination' is:

- (a) offensive behaviour based on racial hatred;

- (b) sexual harassment; and
 - (c) harassment of people with disabilities.
- 3.5 Notwithstanding the breadth and range of the protected attributes, there is no protection against discrimination on the grounds of a person's religious identity and belief.
- 3.6 Further, to the extent that the *Fair Work Act 2009* (Cth) provides protection against adverse action, including because of the person's religion, it does not operate in jurisdictions such as New South Wales. In particular, section 351(2) states that:
- However, subsection (1) does not apply to action that is:
- (a) not unlawful under any anti-discrimination law in force in the place where the action is taken; or
 - (b) taken because of the inherent requirements of the particular position concerned; or
 - (c) ...
- 3.7 In New South Wales, although the *Anti-Discrimination Act 1977* (NSW) (**AD Act**) prohibits unlawful racial, sexual and other types of discrimination, it is silent on discrimination on the grounds of a person's religious identity and belief.
- 3.8 Insofar as the AD Act includes the ground of ethnic, national or ethno-religious origin (found to include groups like Jews or Sikhs), this does not extend to Australian Muslims. 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 the AD Act.¹ Hence, as it stands, in States such as NSW, Australian Muslims do not have any legislative protections against religious discrimination.
- 3.9 In the above context, it is a fundamental deficiency in the federal discrimination legislative regime that there is no protection against discrimination on the grounds of a person's religious belief and practices.
- 3.10 The absence of protection against discrimination because of a person's religious belief and practices affects people of all faiths and not just Australian Muslims. It has

¹ *Ekeremawi v Nine Network Australia Pty Limited* [2019] NSWCATAD 29 (15 February 2019)

a more significant impact of people of minority faiths. As Chief Justice John Latham explained in the *Jehovah's Witnesses* case of 1943:²

...it should not be forgotten that such a provision as s.116 [of the Constitution] is not required for the protection of the religion of a majority. The religion of the majority of people can look after itself. Section 116 is required to protect the religion (or absence of religion) of minorities, and, in particular, of unpopular minorities.

3.11 However, it is to be noted that the mandate of s.116 of the Constitution is a denial of legislative power that only constrains the Commonwealth.³

3.12 Further, as noted by the Human Rights and Equal Opportunity Commission:⁴

Despite the legal protections that apply in different jurisdictions, many Australians suffer discrimination on the basis of religious belief or non-belief, including members of both mainstream and non-mainstream religions and those of no religious persuasion.

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

3.14 Following the tragic events of Christchurch on 15 March 2019 when 51 men, women and children were murdered while they were praying in two mosques, there has also been an increasing experience of anti-Muslim attacks directed at Australian Muslims based on their religious identity. The Bill sends a message that their faith is valued and they should not need to hide their religious identity or practices, be it wearing a hijab or attending congregational prayers on a Friday.

3.15 Australian Muslims (and indeed people of faiths more generally) need a form of recourse to challenge those who openly discriminate against them, vilify them and

² *Adelaide Company of Jehovah's Witnesses Incorporated Plaintiff; and The Commonwealth Defendant* [1943] ALR 193.

³ *Attorney-General (Vic); Ex rel Black v Commonwealth (DOGS case)* (1981) 146 CLR 559 at 652 per Wilson J. See also at 577 per Barwick CJ and *Hoxton Park Residents Action Group v Liverpool City Council (No 2)* (2011) 256 FLR 156; [2011] NSWCA 363 at [38]-[42] per Basten JA.

⁴https://humanrights.gov.au/sites/default/files/content/pdf/human_rights/religion/article_18_religious_freedom.pdf.

incite hatred and/or violence against them on the basis of their religious belief or activity.

3.16 Legislative recourse is also required as a matter of equity, as protections only exist in a few States and even then, the position under the law is inconsistent depending on the place in which the relevant conduct occurs.

3.17 Importantly, any discussion relating to the Bill should also include an examination of the issue of vilification due to a person's religious identity and belief, including Islamophobia⁵, an issue which is neglected by the Bill. In recent times, there has been an increasing experience in anti-Muslim sentiment in the Australian Muslim community (as briefly discussed below). There appears to be little recognition of, and attempt to address, this matter.

4. **GROWING TREND OF ISLAMOPHOBIC AND ANTI-MUSLIM INCIDENTS⁶**

4.1 Over the past 24 months, there were 349 incidents reported in the latest Islamophobia Report⁷. The number of reports within the same period highlight that Islamophobia and/or anti-Muslim sentiment in Australia is a continuous phenomenon.

4.2 Lack of any legal consequence to minimise the vilification of Muslims as individuals or a community contributes to the increased victimisation of Muslims on the basis of their religion. This also goes to the heart of issues around the under-reporting of incidents perpetrated against Australian Muslims namely due to the fact that Australian Muslims feel an element of disappointment from a legislative perspective in affording them the same level of protections offered to other minorities

4.3 The Islamophobia Register⁸ has recorded:

⁵ Islamophobia is a form of racism that includes various forms of violence, violations, discrimination and subordination that occur across multiple sites in response to the problematisation of Muslim identity (Sayyid, Salman. 2014. "A Measure of Islamophobia." Islamophobia Studies Journal 2, no. 1: 10-25)

⁶ Facts and data as reported in the *Islamophobia in Australia Report II* (2017-2018). Sydney: Charles Sturt University and ISRA, 2019. See also: *Islamophobia in Australia 2014-2016*. Sydney: Charles Sturt University and ISRA, 2017.

⁷ *Islamophobia in Australia Report II 2017-2018*

⁸ www.Islamophobiaregister.com.au

- (a) acts of discrimination or bullying against Muslims such as at workplaces, schools or public places;
- (b) attacks on mosques and Islamic Schools;
- (c) attacks including verbal assaults, targeting Muslims and especially Muslim women; and
- (d) attacks, including physical attacks involving brutal violence, especially targeting Muslim women.⁹

4.4 These incidents often occurred in places such as shops, schools, public buildings, public transport, carparks and places of employment. A point of concern in these findings notes that up to 60% of the incidents occurred in guarded places, highlighting the fact that public visibility was not a deterrent to perpetrators.¹⁰

4.5 The increased public acts of hatred cited in the *Islamophobia in Australia Report* demonstrates that the social stigma attached to this form of antisocial behaviour is disappearing, whereby perpetrators do not feel a sense of fear of consequences or accountability for their action. 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*”) and dehumanising people so it becomes easier to victimise them (for example calling them “*cockroaches*”, “*a disease*”).

4.6 Set out at **Appendix A** are various case examples of discrimination experienced by Australian Muslims in various context. These are drawn from *Islamophobia in Australia Report II 2016-2017 - released in 2019* and also *Sharing the Stories of Australian Muslims*, a report published by the Australian Human Rights Commission in 2021.¹¹ ANIC has also directly received reports of discriminatory conduct experienced by Australian Muslims and is working with them to identify possible resolutions and guidance.

⁹ In the latest *Islamophobia in Australia Report II 2017-2018*, Muslim women remain the major victim group of personal attack offline, with the majority perpetrator group, Australian non-Muslim men.

¹⁰ *Islamophobia in Australia Report II 2016-2017 - released in 2019*

¹¹ <https://humanrights.gov.au/our-work/race-discrimination/publications/sharing-stories-australian-muslims-2021>

5. **BENEFITS OF A CIVIL PROCESS**

- 5.1 The proposals advanced by the Bill will have the effect that discrimination on the grounds of a person's religious identity and belief will be addressed by civil remedies. There are many benefits to providing a civil remedy which offers some protection to religious communities at risk of discrimination (and vilification).
- 5.2 First, it does not rely solely on criminal legislation, 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.
- 5.3 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.
- 5.4 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.
- 5.5 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.
- 5.6 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.
- 5.7 Anything said in that conciliation meeting is privileged, private and confidential.
- 5.8 The conciliatory approach allows for a broader scope of outcomes. Outcomes could include:
- (a) having material taken down and not put back up;
 - (b) an undertaking not to repeat that particular conduct;
 - (c) a statement of apology/regret; and/or
 - (d) compensation or donation to community project.

5.9 Over the past 24 months, there were 349 incidents reported in the latest Islamophobia Report¹². The number of reports within the same period highlight that Islamophobia in Australia is a continuous phenomenon.

6. THE BILL

6.1 In summary, the Bill represents a positive contribution to an area in need of legislative reform. It also adopts an approach which is consistent with the various existing discrimination legislation in terms of the protections provided and concepts adopted. Accordingly, ANIC commends and supports the Bill.

6.2 A number of specific matters are raised as below.

6.3 First and foremost, the Bill does not provide any protection in respect of vilification. Such a protection is necessary, particularly given the increasing experience of anti-Muslim sentiment. The increasingly public acts of hatred cited in the Charles Sturt University's *Islamophobia in Australia Report 2019* demonstrated that the social stigma attached to this form of antisocial behaviour is disappearing. The Parramatta incident,¹³ whereby a woman of Islamic faith wearing the hijab¹⁴ and being 38 weeks pregnant, was vilified and brutally assaulted in a café by a complete stranger, underlines the real consequences to public safety and order.

6.4 An appropriate provision is readily able to be included using the proposed provisions of the Bill. The Bill presently defines 'vilify' in terms that means inciting hatred or violence towards the person or group. Clause 12, Statement of Belief, provides protection for persons against statements that a reasonable person would consider would threaten, intimidate, harass or vilify a person or group. In other words, it provides protections for persons against statements which may otherwise be statements of belief (typically expressed by a person of faith). A similar and reciprocal protection should also be included to provide a protection for persons of faith against statements directed at their religious identity and belief. This could operate as a stand alone provision.

¹² *Islamophobia in Australia Report II 2017-2018*

¹³ This incident occurred in November 2019 in Parramatta NSW.

¹⁴ The Islamic head covering- also referred to as the veil.

- 6.5 Second, clause 14, Discrimination on the ground of religious belief or activity – indirect discrimination, appears to omit a provision to make clear that person who imposes, or proposes to impose, a condition, requirement or practice has the burden of proving that the condition, requirement or practice is reasonable. To ensure a consistency with other federal discrimination laws, such a provision making clear the onus should be included.
- 6.6 Third, clause 37(2), Law enforcement, national security and intelligence functions etc, appears to be unduly broad in the protection which it provides. If such a provision operates to provide a broad exemption to law enforcement, national security and intelligence functions, it risks alienating Muslims and creating a sense of mistrust given the experiences of coercive and investigative powers being misused. At a minimum, there ought to be a review or capacity to seek redress through the Commissioner.
- 6.7 Fourth, the Bill should contain a ‘reasonable adjustments’ provision, as found in other related legislation (for instance, see s. 5 and s. 6 of the *Disability Discrimination Act 1992*). Such a requirement would operate so that an employer is required to make reasonable adjustments for an employee’s genuine religious beliefs unless to do so would cause the organisation substantial hardship. For example, where there are sufficient staff to allow flexible rostering that would accommodate a Muslim to attend for compulsory Friday congregational prayer, it would be discrimination if the employer refuses to make the reasonable adjustments. Conversely, if it was *not* reasonable – for example, there were insufficient staff or the continuous operations would be impacted – then an employer would not be required to adjust rosters to accommodate the religious obligations of some employees.

7. **CONCLUSION**

- 7.1 We are grateful for the opportunity to make this submission and, subject to the matters outlined above, commend the Bill in seeking to address a significant anomaly and position whereby there is an absence of adequate and appropriate legislative protection against discrimination based on a person's religious identity and belief.
- 7.2 If the Parliamentary Joint Committee requires further information or has any questions, we would be pleased to address any request.

A handwritten signature in black ink, appearing to read 'Bilal Rauf', written in a cursive style.

Bilal Rauf
Advisor and Spokesperson
Australian National Imams Council

20 December 2021

Appendix 1:

Illustrative scenarios involving persons experiencing discrimination

Discrimination of a patient by the doctor

1. Case 41-17: Today I had to go to the local doctor at Coburg to get a medical certificate for the flu. The doctor treated me with a very harsh manner and mocked my niqab [face covering or veil]. There was no female doctor available, so I decided to see the male doctor as there was no physical examination required. After I entered the room, he asked me to close the door. I politely requested, "Do you mind if the door is left open?" He immediately replied in a loud harsh and offensive manner, "Why? Am I doing something wrong to you? Just because you are wearing this (he made a hand gesture referring to my niqab), it doesn't mean that you are the only one who believes in God. I also believe in God. **If you don't trust me, then get out of here. And don't come here anymore.**" Since I was already unwell, I chose not to argue with him. I then lodged a complaint at the medical centre reception to let them know that maybe he needs training on professional mannerism.

Discrimination by employer

2. Case 168-17: An employer said directly that he wouldn't have hired me had I been wearing a hijab in the picture I sent of myself in the application. I had decided to wear a hijab on the day because I felt like it and he asked me if I had to be wearing it. He used his European background as an excuse – saying that he was not used to it because of it. He insisted that I shouldn't have worn it because it's not how I applied for the job and then said he wouldn't have hired me if I "looked like that". I walked away as he was explaining how I would be working for the day.

Discrimination by colleagues within the workplace

3. Case 141-17: I walked into work, two co-workers – a male and female – approached me and were harassing me about my hair [which was covered]. After a while, I said look I can't show you, I'm not going to do that, but look at my eyebrows and that will give you a good enough idea. A second woman came into the vicinity, said "It's just hair," and grabbed my head with one hand and pulled back my scarf as I stood there

shocked trying to hold it down. This happened with three staff on and in front of patients. They laughed and all walked off.

Escalation at workplace for not shaking hand of the opposite sex

4. Case 1-14: "I travelled to Brisbane to work for the government project, and the very first day, I was introduced to a man (my counterpart), he was a Protestant person, so he was ok. However, there was one lady who was externally involved in the project. I was supposed to meet here in the office to introduced, so one of my office colleagues who was already from day one of the project, called her and brought her to meet me. I said hello and she immediately forwarded her hand to shake, which I politely refused, telling her that since I am Muslim, I don't shake hand with women (not related). She said ok. But once she left she made a big escalation email to my Indian manager. I got the call from my manager and I was surprised as I was not expecting it and I was under the assumption that she will respect my will. I immediately called her to a meeting room, where she came and I briefed her again the reason for not shaking the hand, this time she started talking about "WE ARE AUSTRALIANS" and not UK or Americans, we don't like this kind of attitude, and if you want to be like this better get lost, etc. I said that to show your opinion, I respect that. I will get back to my manager and inform the same, she got pushed back and after that she started talking about their culture, and how I should fit into it. I said this is my culture, and I have no intention after this meeting to her your hand. After that, I knew that it is not worth talking to the lady. So we called off the meeting. Post that I continued in the project for next 7 months, and found that this lady has some contact to the project higher management, and have her say. But, I brushed this off the entire episode thinking that she is ignorant women (which she is), but now I realise that this kind of behaviour and claims she made in the meeting was not acceptable."

Airport officer asking to remove hijab:

5. Case 133-14: "I was traveling overseas that day and when I wanted to pass the security screening gate, the lady there forced me to remove my scarf. I was shocked and so scared. I told her why but she never told me the reason and instead yelled at me and said ""don't you know why you have to remove your scarf?". I was so shocked and had to remove my scarf in front of all other passengers. Once I passed the gate, the lady once again came to me and yelled ""don't you know why you have to remove your scarf?"". I lodged a complaint to the airport and this is what they said

to me: ""The investigation into your concerns regarding our staff member's conduct has now been completed. The investigation identified that the female screening officer involved was following the correct procedure by asking your partner to remove her scarf, not realising that the loose fitting scarf was of religious significance to your partner. While the religious significance of your partner's head wear was not made known to the screening officer, the officer could have been more engaging in her approach to identify your partner's situation and discomfort in the request". I am not satisfied with this and I would like you to help me take this further, and to media ...

Discrimination at job interview:

6. Case 220-18: My 16 year old had his 1st job interview with XXX as an apprentice boilermaker. The company is at XXXX, Prestons. The interviewer was XXX who is the managing director. On the application for there was a question Religion to which my son put Muslim. I was under the impression that this was illegal to ask but I could be wrong. He walked into the interview room and Ron yells at him "Muslim, you are a Muslim. Don't think you can work here and pray all day ". My son politely said my prayers take me 5 minutes. There was no job description given to my son. No hours. No tour of the factory. Nothing ... I am putting in a application to the anti-discrimination board. My 16 year old was left broken and my heart was shattered into a million pieces. We are both Australian born and raised but this man couldn't see past our religion.

Discrimination at Work

7. Case 168-14:"Denied a full time position twice because my name and beard at ASX and Sydney overseas terminal and to continue working had to change my name to gee instead of jihad. Don't want this registered as Islamaphobia rather just venting out. Simply "the average aussie perceives you as a threat" because of my beard and name. Only grounds are they are worried the kind of perception the company will receive ...