



## AUSTRALIAN NATIONAL IMAMS COUNCIL (ANIC)

### *Submission to the Parliamentary Joint Committee on Intelligence and Security*

### *Inquiry into the Exposure Draft Combatting Antisemitism Hate and Extremism Bill 2026*

**Submitted by:** Australian National Imams Council (ANIC) via email to

[pjcis@aph.gov.au](mailto:pjcis@aph.gov.au)

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**Contact:** [office@anic.org.au](mailto:office@anic.org.au)

#### **Executive Summary**

The *Combatting Antisemitism Hate and Extremism Bill 2026* (**Bill**) seeks to introduce significant amendments which will have a profound impact on communities. As it stands, the Bill is ill-considered and poorly pursued.

Without proper and careful consideration, the Bill risks undermining social cohesion and creating division, rather than effectively addressing hate. It requires proper consultation to guard against the risks which have been highlighted. This consultation has not occurred. Its implementation will likely limit a collaborative approach to addressing issues of hate and thereby undermine the achievement of the stated objectives of the Bill. Accordingly, while ANIC agrees in concept with the need to address hate and extremism, it has grave reservations about various provisions of the Bill and the process by which it is being pursued.

Subject to the above matters, and given the short timeframe which has been imposed, ANIC has attempted to provide some preliminary feedback as contained in this submission.

The Bill seeks to introduce wide-ranging reforms to criminal, national security, and migration law. Yet, the Bill fails to even acknowledge, let alone address, Islamophobia as a distinct harm. In whatever form it is pursued, it ought to include explicit recognition of Islamophobia and the characteristic of religious identity as a protected characteristic. A dedicated Islamophobia prevention framework is required, incorporating education,



reporting mechanisms, and remedies. Absent such provisions, the Bill appears to be partial in its approach and concerned only with some or limited communities.

Amongst other provisions of concern, the Bill creates retrospective risk, enabling past lawful speech or conduct to trigger new penalties. This contravenes the principle of legality in Australian law, which holds that criminal liability should only attach to conduct that is unlawful at the time it is committed (Crimes Act 1914 (Cth) s 15AA; Australian common law; ICCPR Article 15(1)). It must be amended to explicitly prohibit retroactive penalties for past lawful speech or conduct and provide safe harbours for pre-enactment activity to preserve legal certainty. Such a provision would also operate to create anxiety and uncertainty within communities, thereby undermining social cohesion and a collaborative approach to addressing issues of hate.

The Bill does not provide clear protections for faith-based religious teaching, sermons, or theological instruction. Without explicit safeguards, the combination of retrospective risk and narrow defences disproportionately burdens religious leaders, restricts public religious discourse, and constitutes systemic discrimination based on religion. In an environment where there is a significantly increased experience of Islamophobia, including against imams, this Bill will likely worsen that situation and create a greater anxiety within the Australian Muslim community, amounting to Islamophobia in law and practice.

## **Introduction**

While ANIC recognises the Government's intent to address hate and extremism, the Bill, as drafted, is fundamentally flawed. Its breadth and severity, pursued without adequate evidence or consultation, risk alienating communities rather than protecting them. The three-day consultation period denies affected communities a genuine opportunity to engage, heightening the risk of unintended and harmful outcomes and undermining the stated objectives of the Bill.

ANIC submits this response on behalf of Muslim religious leaders across Australia, reflecting the experiences of communities who face ongoing Islamophobia in public discourse, media representation, and engagement with state institutions.

Effective reform requires due process, legal rigour, robust expert and community consultation, and comprehensive impact assessment.



## **Core Concerns**

### ***Criminal Law and Religious Leadership***

Aggravated offences for religious leaders treat faith leadership as a risk factor, potentially criminalising lawful sermons, religious guidance, and moral commentary. The narrow religious instruction defence fails to protect the range of doctrinal commentary and applied theology provided by imams and religious leaders.

Faith-based religious teaching, sermons, and theological instruction must be protected, with enforcement considering doctrinal context, intent, and good faith. Without these protections, religious leaders face self-censorship, diminished public engagement, and heightened risk of prosecution for standard religious practice. These protections are necessary to comply with anti-discrimination obligations under Australian law (Racial Discrimination Act 1975 (Cth) and state Equal Opportunity laws) and to uphold the freedoms guaranteed under ICCPR Articles 18–19.

Retrospective risk allows past lawful speech or conduct to be penalised, undermining legal certainty. This is inconsistent with the principle of legality under Australian common law, Section 15AA of the Crimes Act 1914 (Cth), and ICCPR Article 15(1), which prohibits retroactive criminal penalties. The Bill must explicitly prohibit retroactive penalties for past lawful activity and provide safe harbours for pre-enactment conduct.

The combination of aggravated offences, narrow defences, and retrospective liability disproportionately affects faith communities. In an environment where there is a significantly increased experience of Islamophobia, including against imams, this Bill will likely worsen that situation and create a greater anxiety within the Australian Muslim community. It will likely also cause undermine a collaborative his constitutes Islamophobia in law and practice. Ironically, at a time when there is a dire need for increased legislative protection against Islamophobia, the Bill fails to even acknowledge it, let alone address it. Islamophobia warrants explicit recognition and targeted safeguards within criminal law.

### ***Expanded Offences and Police Powers***

Online conduct, symbols, gestures, and public participation in advocacy or protest are criminalised in broad terms. Recklessness-based vilification offences lower the fault element, increasing liability for lawful speech.



Offences must be framed to avoid suppressing legitimate religious expression and civic engagement. Clear definitions of protected religious speech and explicit exemptions for scholarly, interfaith, and journalistic commentary are essential to comply with constitutional protections (implied freedom of political communication) and anti-discrimination law (Racial Discrimination Act 1975 (Cth); state Equal Opportunity laws).

Without these safeguards, these powers create a discouraging effect on civic engagement, religious expression, and faith-based advocacy, disproportionately affecting Muslims.

### ***Executive-Led Prohibited Hate Group Regime***

The regime relies on intelligence assessments and ministerial discretion, with limited transparency or procedural fairness. Prohibited group listings risk retrospective designation based on historical associations or contested interpretations.

Transparent criteria, independent oversight, rights to merits review, and parliamentary scrutiny are required. Designation should not occur solely on the basis of historical associations without evidence of current harm, to ensure compliance with the principles of natural justice, due process under Australian administrative law, and ICCPR Article 14 (the right to a fair trial).

Faith-based and Palestinian community organisations are particularly vulnerable. Specific safeguards must preserve lawful Palestinian advocacy, humanitarian work, and public commentary.

### ***Islamophobia Protections***

The Bill fails to recognise Islamophobia as a distinct harm and does not adequately protect religion as a category. Religion and Islam must be explicitly recognised as protected characteristics in vilification and related offences. Without these measures, Muslim communities are exposed to structural disadvantage and systemic discrimination, which constitutes Islamophobia in law and practice.

Recent reports show that Islamophobic incidents in Australia are rising sharply, with Muslim individuals, particularly women and community leaders, increasingly targeted in both public and online spaces, highlighting the urgent need for legal protections and safeguards.



Enforcement must consider doctrinal context, intent, and good faith to avoid criminalising faith-based religious teaching and scholarship.

### ***Impact on Palestinian Australians***

Broad vilification, symbol, and association provisions risk capturing lawful Palestine-focused advocacy, humanitarian work, and public commentary. Academic research and civil society engagement relating to Palestine may face heightened scrutiny.

Litigation should not be employed to suppress Palestinian advocacy or to bully, intimidate, or silence individuals. We are concerned that this Bill creates a real risk of promoting these outcomes.

Safeguards must ensure that advocacy and humanitarian activities are not criminalised merely for referencing or supporting Palestinian rights. Explicit exemptions for legitimate advocacy and humanitarian engagement are required to comply with domestic anti-discrimination law (Racial Discrimination Act 1975 (Cth), Equal Opportunity laws) and international human rights obligations (ICCPR Articles 18–19 – freedom of expression and association).

Without these protections, lawful political expression and democratic participation within Palestinian and Arab communities are likely to be suppressed.

### ***Schedule 1 – Criminal Law Amendments***

Schedule 1 introduces aggravated offences for religious leaders, increased penalties for hate-related offences with mandatory aggravating factors, recklessness-based vilification offences, expanded offences for symbols, gestures, public conduct, and online activity. It also includes executive-led prohibited hate group listings with limited procedural safeguards and a retrospective-like risk, as well as a narrow religious instruction defence.

Prohibited hate group listings must be accompanied by objective criteria, independent review, and a clear right to challenge. Transparent, auditable processes are essential to prevent disproportionate targeting of Muslim leaders and faith-based organisations, consistent with administrative law principles and ICCPR Article 14.



## ***Schedule 2 – Migration Amendments***

Schedule 2 expands visa refusal and cancellation powers to include speech, association, and online conduct. The lowered thresholds for intervention significantly increase the risk for diaspora leaders, visiting scholars, and community figures. These powers create a deterrent effect on lawful religious engagement, academic work, and humanitarian initiatives.

Lawful religious activities, sermons, theological instruction, scholarship, and humanitarian work must be explicitly protected. Decision-making thresholds must be proportionate, evidence-based, and accompanied by avenues for redress to ensure compliance with domestic law, including the Racial Discrimination Act 1975 (Cth), state Equal Opportunity and anti-discrimination laws, and international obligations under ICCPR Articles 18–19 (freedom of religion, expression, and association).

Without these explicit protections, Muslim communities and Palestinian Australians face structural disadvantage, heightened exposure to Islamophobic outcomes, and disproportionate targeting. Decision-making must respect the principle of legality under Section 15AA of the Crimes Act 1914 (Cth) and ensure that past lawful activity cannot trigger new penalties.

## ***Constitutional and Human Rights Implications***

The Bill engages the implied freedom of political communication, as well as the freedom of religion under section 116. Chapter III raises concerns due to broad executive discretion and retrospective-like enforcement.

The Bill must be reviewed for consistency with international human rights standards on freedom of religion, freedom of expression, and protection against discrimination. Explicit safeguards are required to protect minority faith communities from disproportionate impact. The Bill raises concerns under Australian constitutional law (Sections 116, implied freedom of political communication), domestic anti-discrimination law (Racial Discrimination Act 1975 (Cth), Equal Opportunity laws), and international law (ICCPR Articles 14–15, 18–19).



## **Conclusion**

ANIC acknowledges the importance of protecting individuals from all forms of hate, including antisemitism, and supports proportionate and effective measures to address genuine hate and violence.

As presently drafted and pursued, the Bill represents a serious legislative misstep that risks undermining social cohesion, entrenching division, and legitimising overreach under the guise of addressing hate. The combination of aggravated offences, narrow defences, and retrospective liability disproportionately affects faith communities. In an environment where there is a significantly increased experience of Islamophobia, including against imams, this Bill will likely worsen that situation and create a greater anxiety within the Australian Muslim community.

ANIC urges the Committee to recommend substantial redrafting. This must occur following genuine, meaningful, and inclusive consultation and should include statutory protections for religious teaching, sermons, and theological instruction; explicit recognition of religion and Islam in vilification provisions; targeted safeguards for Palestinian advocacy and humanitarian work; narrowing of overly broad criminal and migration powers; transparent and fair processes for prohibited hate group listings; comprehensive consultation with faith communities and minority groups; robust impact assessments; and independent oversight.

Absent these reforms, the Bill will operate in direct conflict with constitutional principles, equality before the law, and fundamental freedoms, and will compound rather than remedy the harms it purports to address.