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AUSTRALIA'S SPECIAL ENVOY TO COMBAT ISLAMOPHOBIA

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Re: Submission for Review of the Exposure Draft Legislation: Combatting Antisemitism, Hate and Extremism Bill 2026

I write to thank the Committee for the opportunity to comment on the Exposure Draft of the *Combatting Antisemitism, Hate and Extremism Bill 2026* (the Bill).

As the Special Envoy to Combat Islamophobia, I support the Government's shared commitment to safety, dignity and mutual respect following the violent attack and the killing of members of the Jewish community at Bondi Beach on 14 December 2025. I also recognise that this draft Bill is an urgent response to that terror attack.

Any form of violence against individuals or communities because of their faith is an attack on our shared humanity and fundamental rights. Violence and hatred have no place in our society. I acknowledge the Government's steadfast efforts in response to the Bondi attack.

Please find enclosed my submission addressing the Bill's schedule of amendments to legislation related to criminal law (Schedule 1) and migration law (Schedule 2).

In accordance with my terms of reference to advise and assist the Government to better understand and combat Islamophobia, this submission focuses on addressing what I perceive to be an inequitable framework that contains significant gaps in the protection of all Australians.

It is my recommendation that the Bill be amended to include religion as a protected attribute within the *Criminal Code* and *Migration Act* and incorporate adequate procedural safeguards to ensure the law is comprehensive, fair and just for all.

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As best practice, I recommend that future legislation be developed in consultation with key affected communities, including Muslims, prior to its drafting and introduction. This submission has been compiled within an extremely limited timeframe and thus cannot represent a thorough assessment of the proposed Bill.

We must all strive to thrive together, in a country where people different from ourselves do not live in fear, can observe their faith without recrimination or suspicion, and can debate, be critical, disagree, and protest freely. This must be done, all the while avoiding dehumanisation and inciting hatred.

For this to occur, equitable laws will be required to protect individuals from those who seek to incite hatred, but laws alone will not eradicate this poison. There must be genuine investment in efforts to engender social responsibility towards neighbours and strangers alike. One that is predicated on compassion, fairness, and inclusion.

For further enquiries regarding my submission or information, please do not hesitate to contact my office via email at: info@oseci.gov.au, or visit the website at www.oseci.gov.au.

Yours sincerely,

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Submission to the Parliamentary Joint Committee on Intelligence and Security: Review of the Exposure Draft Legislation Combating Antisemitism, Hate and Extremism Bill 2026

Executive Summary

This submission responds to the Parliamentary Joint Committee on Intelligence and Security's inquiry into the Exposure Draft Legislation, Combating Antisemitism, Hate and Extremism Bill (the Bill). The submission provides eight recommendations focused primarily on provisions relating to:

- Aggravated offences for preachers and leaders (Schedule 1 Part 1),
- Prohibited hate groups (Schedule 1 Part 4),
- Racial vilification offences (Schedule 1 Part 5), and
- Migration amendments (Schedule 2, Part 1).

As the submission outlines, most significantly, the Bill must be amended to include religion as a protected attribute within the *Criminal Code* and *Migration Act* and incorporate adequate procedural safeguards to ensure the law is comprehensive, fair and just for all Australians.

The submission calls for the incorporation of clear, enforceable statutory safeguards, including the legislated right to procedural fairness for affected organisations, a disciplined evidentiary focus on observable conduct and demonstrable intent rather than the identity, beliefs, or perceived affiliations of individuals, and explicit protections for robust religious discourse and contemporary religious analysis.

In a policy and political environment where religion is routinely conflated with cultural expression, political dissent, and national security narratives, the submission contends that such safeguards are necessary to prevent regulatory overreach, institutional misapplication, and the entrenchment of implicit bias. Without these protections, the framework risks legitimising distorted interpretations that may directly inhibit the capacity of all Australians to participate freely, safely, and equally in civic, professional, and public life. In addition, the submission seeks to protect democratic participation and civil society protection of Muslim Australians, by ensuring governance structures are not established through what may be considered to be security frameworks.



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Introduction

The Bill proposes a substantial package of reforms across five legislative schedules of amendments. For the purpose of this submission and due to limited time constraints, this submission focuses on the following areas of the Bill:

- The introduction of a new aggravated offence for preachers and leaders who advocate and threaten force or violence against groups or members of groups
- Increased penalties for offences involving advocating or threatening force or violence against protected groups
- A new framework for organisations to be listed as prohibited hate groups where they engage in or advocate hate crimes on the basis of race, or national or ethnic origin
- Introduce a racial vilification offence to criminalise public promotion or incitement of hatred on the grounds of race, colour or national or ethnic origin, or ideas of racial superiority
- Amend the *Migration Act 1958* to provide additional character grounds to refuse to grant or cancel a visa and allow the permanent exclusion of a person from Australia on the basis of hate motivated conduct or offences relating to the spread of hatred and extremism.

The submission is intended to outline to the Committee, the potential impacts and intersections with the lived experience of Muslim Australians, Islamophobia, and to actively partake in strengthening social cohesion and affirming our shared commitment to safety, dignity and mutual respect. As part of my remit, I have provided the Government with my Report, *A National Response to Islamophobia*, which includes consultation undertaken across Australia with participation from over 100 individuals representing peak bodies, youth, religious leaders, community and women organisations and academics from the Muslim community.¹

Schedule 1 - Amendments of legislation relating to the criminal law

Aggravated offence for preachers and leaders (Part 1)

Under Part 1 of Schedule 1, the Bill provides a new aggravated offence for religious or other leaders who provide instruction or pastoral care. The offence includes a maximum penalty of 10 years' imprisonment or 12 years if the conduct would threaten peace, order and good government of the Commonwealth. The provision includes senior religious leaders such as priests, imams, rabbis, bishops, chaplains and ministers and also expands to include spiritual leaders (people who guide individuals or groups in their spiritual practice, including mentors), and other leaders, which include any individual who occupies a position of significant trust and authority in the community.

Under this provision, the grouping of individuals across a spectrum, from official religious leaders to individuals in the community, with the same level of scrutiny categorises materially distinct positions to the same heightened level of criminal scrutiny. Within many Muslim communities in particular, leadership and influence may arise from cultural, familial, linguistic, or community-based norms rather

¹ <https://www.oseci.gov.au/sites/default/files/2025-09/national-response-final-report.pdf>



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than formal religious authority. A person may hold trust or influence entirely through cultural standing, community service, or informal mentorship, without exercising religious instruction or doctrinal authority. The practical conflation of cultural leadership with religious leadership may therefore generate ambiguity in application and expose ordinary community members to unintended legal risk, particularly in diverse communities where religion and culture intersect in complex ways.

The increased penalties for crimes on the basis of a broad range of leadership roles, including individuals considered mentors or exerting influence without an element of intent or harm, will place an undue burden on individuals in the community. For this reason, I would recommend that the definition of 'other leader (however described) of a group' and 'pastoral care' be narrowed in scope.

Furthermore, where there may be discourse of a non-religious nature, such as political commentary, the Bill should provide adequate safeguards to limit the use of this provision where there may be a mischaracterisation or mislabelling as religious when it may be political or take another form. The ongoing misrepresentation and conflation of Islam can further exacerbate existing stereotypes, racism, and prejudice faced by Muslims, and lead to further, ongoing over-securitisation and policing of the Muslim community. I recommend that the Bill contain adequate safeguards including the narrowing of the definition of 'spiritual leader' and 'pastoral care' in this regard.

Prohibited hate groups (Part 4)

Part 4 of the Bill provides a framework where organisations determined to have engaged or advocated for hate crimes on the basis of race, national or ethnic origin be listed as a prohibited hate group. The Bill also creates a number of offences related to the conduct of a prohibited hate group. The Bill requires the Australian Federal Police (AFP) Minister to be satisfied that the organisation has engaged, prepared, planned or assisted in a hate crime and advocated for hate crimes relating to race, national or ethnic origin and that it is reasonably necessary to prevent social, economic, psychological and physical harm to the Australian community.

The Explanatory Memorandum states that past conduct by organisations can be taken into account by the AFP Minister before the commencement of provisions, indicating a potential retrospective effect taking place.²

My recommendation is to provide proper safeguards for the expression of political views, which is a part of discourse for the proper functioning of a democracy. Groups that engage in peaceful protests should not be implicated by politicisation or pressure to be categorised as a hate group. While the Explanatory Memorandum states that it does not intend to capture mere expressions or opinion or belief, adequate safeguards must be provided to ensure these provisions are not applied at the cost of a proper functioning democracy and society.³

² Explanatory Memorandum, <https://www.ag.gov.au/sites/default/files/2026-01/explanatory-memorandum.pdf>, p.114.

³ Explanatory Memorandum, <https://www.ag.gov.au/sites/default/files/2026-01/explanatory-memorandum.pdf>, p. 115.



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Moreover, the Explanatory Memorandum provides that the AFP Minister is not required to observe any requirements of procedural fairness in alignment with the proscription frameworks for terrorist organisations, as it would lead to protracted challenge and delay.⁴

My recommendation is to ensure there are safeguards, including a sunset and review mechanism in the Bill, adequate notice to affected organisations and the opportunity to respond. These initiatives are important to prevent the classification of groups where there may be political motivations or that are considered unpopular. To protect the implied right to freedom of political communication, procedural fairness must be included in the Bill to ensure this provision is not administered unfairly or impacted by political or public pressure where there is no procedural fairness, the ability to challenge the determination and may have a retrospective application of conduct. This will ensure proper protections are in place for advocacy organisations, charities and community groups.

Racial Vilification Offence (Part 5)

Part 5 of Schedule 1 of the Bill provides a new racial vilification offence which criminalizes the public promotion or incitement of hatred towards another person or group on the grounds of race, colour or national or ethnic origin, or spreading ideas of racial superiority, where the conduct would be determined by a reasonable person to fear harassment, intimidation or violence with a maximum penalty of 5 years imprisonment.

The Government acknowledges in the Explanatory Memorandum that “by prohibiting this conduct, the offence seeks to protect the ability of groups distinguished by race, colour or national or ethnic origin, and members of such groups, to participate safely in society without intimidation or fear of harassment or violence, or to fear for their safety.”⁵

It is important to acknowledge that the scope of this Bill includes the monitoring and at times control of aspects of religion broadly including faith leaders, religious texts and religious instruction, yet simultaneously does not provide protections for other aspects of religion. Also, generally under the existing legislative framework, Muslims are not considered a ‘race.’

For example, currently, Muslims are not included in the ethno-religious category within the definition of ‘race’ in the *Racial Discrimination Act 1975* (Cth), limiting the protections available for Muslims. The amendment of this Act to expand the definition of ‘ethno-religion’ to include Muslims in addition to Jews and Sikhs, remains one of my recommendations provided to the Government in my *National Response to Islamophobia*.⁶ The absence of proper legislated protective safeguards based on religion in Australia remains a significant gap, particularly within the context of rising Islamophobia.

⁴ Explanatory Memorandum, <https://www.ag.gov.au/sites/default/files/2026-01/explanatory-memorandum.pdf>, p. 117.

⁵ Explanatory Memorandum, <https://www.ag.gov.au/sites/default/files/2026-01/explanatory-memorandum.pdf>, p. 134.

⁶ <https://www.oseci.gov.au/sites/default/files/2025-09/national-response-final-report.pdf>, p. 31.



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In comparison, internationally in the United Kingdom, protections are provided for offences involving ‘religious hatred’ alongside protections based on race and in Canada, religion is considered an element of the definition of ‘identifiable group.’ Australia is the only Western liberal democracy without an enshrined Human Rights Act or Bill of Rights. This makes the protected attribute of religion a necessary inclusion in a Bill that seeks to combat hate and extremism and promote social cohesion, as there is limited legal protection available elsewhere. The omission of religion as a protected attribute leaves a significant aspect of the Australian community without any protections and limited scope to combat rising levels of Islamophobia.⁷

In the fortnight that followed the 14 December 2025 Bondi attack, the Islamophobia Register Australia reported a 740% increase in Islamophobia in Australia.⁸ This included individuals receiving abusive and threatening calls, vandalism across Mosques and Islamic centres, desecration of a Muslim cemetery, physical attacks, Muslim women spat at, abused and attacked, and a tsunami of online hate. I recommend that the racial vilification provision under this section of the Bill include religion as one of its grounds.

While the Bill is intended to address social harm, its drafting and implementation must cautiously avoid further demonising the Muslim community in Australia. As established by a significant body of research into the effects of the global “War on Terror,” and subsequent security measures, Muslims have been defined by themes of suspicion and distrust.⁹ This national security discourse has often led to the undermining of the human rights of Muslims in Australia.¹⁰

There is a significant risk that this new legislation could be co-opted as a “rallying cry” against Islam and Muslim Australians, fuelled by a persistent misunderstanding amongst the public in differentiating between individual criminal actors and the theological bases of Islam, as well as the broader Muslim community. Because of this misunderstanding, there has been a 740% increase in reported Islamophobia, with many cases being under-reported since the Bondi attack. Research also tells us that these mis-associations of “Islamic terrorism” with the Muslim community more broadly result in a “politics of accountability” that unfairly deems everyday Muslim Australians responsible for condemning or absorbing the negative implications of the actions of an extreme minority.¹¹

To prevent these catastrophic ripple effects on Muslim communities, I strongly recommend that the Bill avoid reinforcing “de-radicalisation” frameworks centred on Islam or Muslim communities that have historically functioned as ineffective and discriminatory community policing tools.¹²

⁷ *Racial and Religious Hatred Act 2006* (UK), *Criminal Code* (sections 318–319) (Canada).

⁸ Personal correspondence with the Islamophobia Register Australia.

⁹ Rhonda Itaoui and Elsadig Elsheikh, *Islamophobia in Asia-Pacific: A Reading Resource Pack* (Berkeley, CA: Othering & Belonging Institute, University of California, Berkeley, 2023), 19–20.

¹⁰ Scott Poynting, “Islamophobia, Human Rights and the ‘War on Terror’,” in *Crime, Justice and Social Democracy*, ed. Kerry Carrington et al. (London: Palgrave Macmillan, 2013), 133–144.

¹¹ Randa Abdel-Fattah, “Islamophobia and Australian Muslim Political Consciousness in the War on Terror,” *Journal of Intercultural Studies* 38, no. 4 (2017): 397–411

¹² Kevin Mark Dunn et al., “Can You Use Community Policing for Counter Terrorism? Evidence from NSW, Australia,” *Police Practice and Research* 17, no. 3 (2016): 196–211.



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A failure to de-centre religious identity from the Bill's enforcement risks triggering a ripple effect of "self-surveillance," where the fear of being "othered" or criminalised curtails the ability of Muslims to go about their daily lives with the same rights and freedoms as other citizens.¹³

The Government has included a review of this offence in the Bill in two-year's time. If the Bill is not amended to include religion as a protected attribute, I hope that at the time of the review, if not earlier, the Government commits to an expansion and amendment to include the criminalisation of the public promotion or incitement of hate towards another person or group on the grounds of religion. As incidents of Islamophobia continue to rise, including most recently the violent and unprovoked attack on an Imam and his wife in Victoria on 10 January 2026, similar protections should also be provided to members of the Muslim community.

One of the main defences under this section is if the conduct consists of only directly quoting from, or otherwise referencing or paraphrasing a religious text, within the context of religious teaching or discussion. The example provided in the Explanatory Memorandum includes reading a passage from religious scripture during a sermon or study group for theological discussion, however, if quoting a religious text and then sharing an interpretation of the text to encourage listeners to act with hostility towards a racial group, it would not be covered by the defence.

It is important to ensure that complex elements of theology or rigorous debates regarding religious texts (such as the Qur'an), including contemporary analysis are not implicated by these provisions. The discussion of the sayings attributed to the Prophet Muhammad (*hadith*), which are considered part of Islamic scripture should not be a target of this offence, particularly on matters that require a thorough understanding of such religious texts. It is often the case that ill-equipped individuals who lack any *bona fide* credentials misinterpret the Qur'an and *hadith* that result in contradicting established ethical norms and Prophetic custom (*Sunna*). This misinterpretation can give rise to increasing social anxiety towards Muslims, further fomenting Islamophobic hate. These individuals, both Muslim and non- betray the authentic teachings of Islam, exacerbating Islamophobia and therefore it would have been imperative that this particular nuance have been reflected in the Bill.

Schedule 2 - Migration Amendments

Schedule 2 (Part 1)

The Bill provides under Part 1 of Schedule 2 that the *Migration Act 1958* be amended to insert new grounds that address hate-motivated conduct and conduct or offences that may spread hatred and extremism. The Character grounds provided under sections 500 and 501 of the *Migration Act 1958* includes circumstances where a person is or was a member or associated with an organisation that was a terrorist organisation, prohibited hate group, state sponsor of terrorism, the person has been involved in conduct constituting a 'hate crime' and where a person has endorsed one or more public statements

¹³ Randa Abdel-Fattah, *Coming of Age in the War on Terror* (Sydney: New South Publishing, 2021)



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(including online) disseminating ideas based on superiority over or hatred on the basis of race, colour, or national or ethnic origin.

In a similar manner to the provisions in the racial vilification offences, this section does not provide for protections where hatred may be expressed on the basis of religion. I recommend the Bill include safeguards against the promotion of hate speech, including for people who have had a history of promoting Islamophobic hatred. This would be in alignment with recommendation 16 provided to the Government in my report.¹⁴

Notably, the lowering of the threshold to ‘might pose a risk’ for individuals to be granted visas, may have the potential for decisions to be made based on political sensitivity or expression or pressure rather than a proper system that examines past criminal convictions as a threshold. This may lead to situations where religious debate may be limited, without the ability for example for speakers or academics to travel freely to Australia.

I recommend this provision include adequate safeguards against the vilification of individuals where there may be political sensitivity rather than any direct form of harm, to protect religious freedoms and respectful discourse on political issues.

Recommendations

1. Narrow the definitions of terms including ‘spiritual leader,’ ‘other leader (however described) of a group’ and ‘pastoral care’ in Part 1 of the Bill to focus on the intent to incite violence rather than a focus on the position of an individual.
2. Provide safeguards in Part 1 of the Bill for the conflation of political commentary as religious to mitigate against the ongoing misrepresentation and misunderstanding of Islam.
3. Include a sunset clause and review mechanism in Part 4 of the Bill and additional procedural fairness safeguards, such as adequate notice to affected organisations and the ability to respond where a group may be listed as a prohibited hate group.
4. Amend the racial vilification provision to include religion as one of its grounds - in addition to the grounds of race, colour or national or ethnic origin.
5. Avoid the reinforcement of “de-radicalisation” frameworks centred on Islam or Muslim communities, which can lead to “self-surveillance,” fear of being ‘othered’ curtails the ability of ordinary Muslims to go about their daily lives as other Australian citizens.
6. Ensure the defence of the racial vilification provisions does not impact the ability for people to undertake rigorous debates on complex elements of theology and contemporary analysis.
7. Amend sections 500 and 501 of the *Migration Act 1958* to include a safeguard against the promotion of hate speech for people who have a history of promoting Islamophobic hatred.
8. Provide safeguards against the vilification of individuals where there may be political sensitivities.

¹⁴ <https://www.oseci.gov.au/sites/default/files/2025-09/national-response-final-report.pdf>, p. 30.