

Joint Select Committee on the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020*

**Joint submission made by the
Australian National Imams Council and
other signatories**

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Parliament House
Macquarie Street
Sydney NSW 2000

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1. Introduction

This joint submission is made on behalf of the broader Australian Muslim community relating to the *Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 (Bill)*. The submission has been prepared by Australian National Imams Council (**ANIC**), supported by a number of NSW based organisations with a representative role in the Australian Muslim community and specifically in NSW. These organisations are listed in **Schedule 1** to this submission. Therefore, this submission is reflective of the views prevalent in the Australian Muslim community.

The concept of the Bill is much overdue in NSW. It offers a critical opportunity to address an urgent and pressing concern held by Australian Muslims living in NSW and persons of other minority faiths. This is in a context where, in NSW, there is no legislative protection against discrimination directed at a person based on their religious identity and belief.

It is important that NSW implements a uniform and consistent protection for all religious communities, particularly in a climate of increasing Islamophobic and anti-religious sentiment directed at persons who are readily identifiable with reference to their religious belief, activities and/or affiliation.

We appreciate the opportunity to make this submission to the Joint Select Committee in relation to the Bill and look forward to further engaging on the Bill.

2. The Australian National Imams Council

ANIC is an umbrella organisation consisting of 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.

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 in the effort to promote harmony, cooperation and successful integration within mainstream society. ANIC has played a leading role in making a submission on behalf of the Australian Muslim community relating to the federal *Religious Discrimination Bill* which was proposed by the Government during 2019.

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 lead the making of this submission, as supported by the various other community based organisations.

3. Absence of laws protecting against discrimination on religious grounds in NSW

We see an Australia with a hopeful and vibrant sense of nationhood and one that owns and celebrates its cosmopolitan nature. Necessary to that nationhood is the ability to grapple with the most difficult contentions and tensions with honesty, genuine listening and mutual respect. The strength of our liberal democracy is core, not only in protecting freedom of expression and encouraging quality debate, but also in upholding equality of opportunity and respect amongst diverse peoples.

NSW, as Australia's first State, has typically led the nation in terms of cultural and economic developments and policy initiatives. It has one of the most diverse populations in terms of ethnicity, cultural background and religious identity. State governments, present and former, have celebrated the diversity of the State and that it embraces people from different backgrounds and cultures.¹ In supporting multicultural events, the State government stated that:

¹ For example, see information about NSW shared at <https://www.nsw.gov.au/about-nsw>

We are stronger because of our diversity, and together we are building a society that works better in harmony. Our cultural diversity gives us a creative and competitive edge on the world stage²

It is therefore an anomaly and unfortunate predicament that, in NSW, there is no legislative protection against discrimination directed at a person based on their religious identity and belief. In contrast, other States, such as Victoria, have recognised the need for legislative reform and have taken steps to ensure that there is protection against discrimination on the grounds of a person's religious identity and belief.³

In contrast, the existing legislative regime reflected in the *Anti-Discrimination Act 1977* (NSW) (**AD Act**) prohibits unlawful racial, sexual and other types of discrimination in certain circumstances. However, the AD Act is silent on discrimination on the grounds of a person's religious identity and belief.

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.⁴ Hence, as it stands, in NSW Muslims do not have any legislative protections against religious vilification on a State level.

In the *Sonia Kruger* case, the NSW Civil and Administrative Tribunal stated:⁵

In our view, Ms Kruger could have expressed her comments in a more measured manner to avoid a finding of vilification. For example, she could have referred to the need for Australia to engage in greater security checking of people wishing to migrate to Australia who may happen to be Muslims and the need to prevent a drift towards radicalisation amongst Muslims currently in Australia, rather than simply stating that 500,000 Muslims represents an unacceptable safety risk which justifies stopping all Muslim migration.

² <https://multicultural.nsw.gov.au/grants>

³ For example, in Victoria, see *Racial and Religious Tolerance Act 2001*; in Qld, see *Anti-Discrimination Act 1991*.

⁴ *Ekeremawi v Nine Network Australia Pty Limited* [2019] NSWCATAD 29 (15 February 2019)

⁵ *Ekeremawi v Nine Network Australia Pty Limited* [2019] NSWCATAD 29 (15 February 2019)

Incidentally, while the conduct was found to be vilification, it was also found to be lawful. Religion is not a protected attribute in the AD Act and Australian Muslims are otherwise unable to avail of the protected category of an “ethno-religious” group.

Australian Muslims continue to be readily identifiable by their names, appearance, dress and attendance at places of worship. 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. When it results in real world attacks, the psychological impacts are lasting.

Fundamental to religious freedom is also the ability to manifest that faith and identify one’s religious identity and belief without fear of discrimination, vilification or violence to oneself or one’s family. Yet, in NSW, there is no protection.

To the extent that some protection is conceivably afforded by section 93Z of the *Crimes Act 1900* (NSW), such a provision is not been utilised and no charges have been pursued under it since its enactment on 20 June 2018. In any event, it is confined to public acts which threaten or incite violence towards another person or a group of persons on the grounds of, among other grounds, religious belief or affiliation.

The above concerns affects people of all minority faiths and not just Australian Muslims residing in NSW. As Chief Justice John Latham explained in the *Jehovah’s Witnesses* case of 1943:⁶

...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.

Further, as noted by the Human Rights and Equal Opportunity Commission:⁷

⁶ *Adelaide Company of Jehovah’s Witnesses Incorporated Plaintiff; and The Commonwealth Defendant* [1943] ALR 193.

⁷https://humanrights.gov.au/sites/default/files/content/pdf/human_rights/religion/article_18_religious_freedom.pdf.

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

So it is that, in NSW, a person who is discriminated against on the basis of their religion, has no effective recourse. If that same discrimination was based on their race, gender or ethnicity, the law properly affords to them a protection. The position is similar at a federal level such that there is no effective protection for persons based on their religious belief and activities.

In the above context, the Bill is a much overdue concept. It offers a critical opportunity to address an urgent and pressing concern held by Australian Muslims living in NSW and persons of other minority faiths.

Importantly, any discussion relating to the Bill should also include an examination of the issue of vilification due to a person's religious affiliation and belief, including Islamophobia⁸, an issue which is wholly 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 by the major political parties.

4. Growing trend of Islamophobic incidents ⁹

Over the past 24 months, there were 349 incidents reported in the latest Islamophobia Report¹⁰. The number of reports within the same period highlight that Islamophobia in Australia is a continuous phenomenon.

⁸ 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)

⁹ 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.

¹⁰ *Islamophobia in Australia Report II 2017-2018*

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.

The Islamophobia Register¹¹ has recorded:

- 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;
- d) Online Islamophobia and anti-Muslim content on social media;
- e) Attacks, including physical attacks involving brutal violence, especially targeting Muslim women.¹²

These incidents often occurred in hotspots 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.¹³

The Parramatta incident,¹⁴ whereby a woman of Islamic faith wearing the hijab¹⁵ and being 38 weeks pregnant, was brutally assaulted in a café by a complete stranger,

¹¹ www.Islamophobiaregister.com.au

¹² 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.

¹³ *Islamophobia in Australia Report II 2016-2017 - released in 2019*

¹⁴ This incident occurred in November 2019 in Parramatta NSW.

¹⁵ The Islamic head covering- also referred to as the veil.

underlines the real consequences to public safety and order. It is incumbent on decision-makers to consider the impact on the next generation of Australian youth, Muslim and otherwise; on community resilience and social cohesion.

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*”).

The issue of religious vilification has been an ongoing one in the political arena and, as noted above, NSW fails to protect its citizens from discrimination on the basis of religion.¹⁶ This position in NSW exacerbates the concern and distress experienced by the Australian Muslim community in NSW (among other minority faith communities).

5. Benefits of a civil process

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).

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.

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

¹⁶ NSW Law Reform Commission recommendations made in Report 92: Review of the Anti-Discrimination Act 1977 (NSW), November 1999

to express their grievances and concerns, and gain insight into the other side's perspective.

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.

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.

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.

Anything said in that conciliation meeting is privileged, private and confidential.

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 speech;
- c) a statement of apology/regret; and/or
- d) compensation or donation to community project.

6. The Bill

In this section, we address specific aspects of the Bill.

In summary, the Bill represents a positive contribution to an area in need of legislative reform. The protection proposed by the provisions of section 22L reflects the language used in existing anti-discrimination provisions on other grounds covered by the AD Act.

However, the Bill requires further consideration as to some of the proposed provisions.

a. Section 3: Principles of the Act

The objective of section 3 is, *inter alia*, to implement and reconcile international law with NSW based legislation, whereby human rights are acknowledged and treated equally in NSW.

However, the Instruments outlined in s.3(1) are directed only to a person's right to manifest their religion or belief and to relate mainly to matters addressed in the proposed Part 2B. Other international human rights treaties to which Australia is a party and which bear directly on other Parts of the AD Act are not included.

b. Section 22K: Definitions

It is noted that the definition of "religious belief" includes:

- (a) having a religious conviction, belief, opinion or affiliation,
- (b) not having any religious conviction, belief, opinion or affiliation.

It is appropriate that the Bill protects those having religious conviction and also those not having religious conviction, thereby providing protection to all categories of persons.

In relation to the definition of “**religious belief**”, it would be prudent to ensure that orthodox and mainstream religious convictions, beliefs, opinions or affiliations are captured rather than any offshoot or splinter convictions, beliefs, opinions or affiliations which do not have a general acceptance as a religion.

The definition of “**religious ethos organisation**” on its face, includes an organisation involved in commercial activities. This may need clarification to avoid uncertainty. It is noted that there are organisations within the Australian Muslim community which conduct charitable and community based activities in accordance with Islamic doctrines, tenets, beliefs or teachings which are aimed at benefiting, or promoting, the welfare of Australian Muslims. The definition should be amended to ensure that such organisations are included in the definition.

Section 22KA, “Determining when a religious belief is held”, appears to adopt a subjective test of belief whereby the question of “genuine belief” is used to determine whether a person holds a religious belief. As noted above, it would be prudent to ensure that orthodox and mainstream religious convictions, beliefs, opinions or affiliations are captured rather than any convictions, beliefs, opinions or affiliations which do not have a general acceptance as a religion.

c. Section 22M: Religious ethos organisations taken not to discriminate in certain circumstances

Section 22M appears to empower “religious ethos organisations” to discriminate on the grounds of a person’s religion in the event that it aligns with the religious beliefs, doctrines and teachings adhered to by the organisation.

Section 22M should be reviewed to ensure that there is no risk of exposure to discrimination for adherents of other religions (and persons generally), especially when engaging in respect of services or being employed by organisations relating to commercial or other activities which are not necessarily religious in nature (for example teaching mathematics at a religious school or purchasing meat at a butchery specialising in the provision of religiously slaughtered meats).

d. Section 22N: Discrimination in employment

Sub section 22N(6) should be amended to remove the factors stated in section 22N(6)(b)(i) and (ii). An assessment of the lawfulness of otherwise of any prohibition of the wearing of religious symbols and clothing with reference to factors such as workplace safety, productivity, communications and customer service requirements of that employment and the industry standards of that employment, are broad and without constraint. Reference to such broad factors may have a disproportionately detrimental impact on Muslim women who wear the religious veil (also known as hijab) which in turn would make it more difficult for Muslim women to engage in employment.

The reasonableness of an employer's conduct can be assessed on the application of the usual principles which are applied by courts and tribunals in the context of anti-discrimination legislation.

More generally, consideration should be given to balancing the right of a person to manifest their religious belief and identity and the wellbeing of others, including in the diverse environment of many workplaces. Put differently, on the one hand, employees should be protected against adverse action taken against them because of the religious belief or activity. On the other hand, it is appropriate that there also be exceptions so that employers can appropriately manage offensive or discriminatory conduct by their employees (which may be motivated by religious beliefs) directed at other persons which is harmful or exposes the other person to risks to their health or safety.

e. General comments relating to the Bill

As noted above, the Bill overlooks the important issue of religious vilification which requires urgent attention. It also does not uniformly extend the benefit of the existing vilification provisions to other faith communities. These matters require attention given the climate of increasing Islamophobic sentiment and conduct.

The existing provisions of the AD Act provide protections to the Jewish and Sikh communities (by virtue of the definitions and principles developed by courts and tribunals relating to the provisions of the AD Act). These have been found not to

extend to Australian Muslims. It follows that a Muslim person cannot bring a discrimination or vilification complaint if another person discriminates or vilifies the Muslim person. In light of this, we recommend, for instance, a provision that extends the existing provisions contained in section 20C of the AD Act to religious vilification.

It is important that a uniform and consistent protection be included for all religious communities.

7. Conclusion

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 in NSW whereby there is an absence of adequate and appropriate legislative protection against discrimination based on a person's religious identity and belief.

If the Joint Select Committee requires further information or has any questions, we would be pleased to address any request.

Yours sincerely,



Bilal Rauf



Ramia Abdo Sultan

21 August 2020

SCHEDULE 1

List of Organisations Signatory to this Joint Submission

Organisation Name	Suburb	Representative
1. Australian National Imams Council	Chullora NSW	Bilal Rauf & Ramia Sultan
2. Council of Imams NSW *	Chullora NSW	Imam Ahmed Abdo
<i>* (Representing 80 Imams (Religious leaders) in NSW)</i>		
3. United Muslims of NSW	Revesby NSW	Talal Elcheikh
4. National Zakat Foundation	Lakemba NSW	Ismail Davids
5. Muslim Women Australia	Lakemba NSW	Maha Abdo
6. Sunnah Foundation & Masjid As-Sunnah	Lakemba NSW	Imam Abdul Salam Zoud
7. United Muslims of Australia	Padstow NSW	Mohammad Charchouh
8. Muslim Cultural and Youth Association Sydney	Minchinbury NSW	Ossama Ellabban
9. Australasian Muslim Times	Bonnyrigg NSW	Zia Ahmad
10. Islamic Women's Welfare Association	Lakemba NSW	Abla Kaddous
11. Muslim league of NSW	Green valley NSW	Shoreeq Azimulla
12. Darul Ulum Sydney	Lakemba NSW	Syed Hasan
13. Alquds Community Centre	Bankstown NSW	Walid Mahmoud
14. Parramatta Islamic Society & Mosque	Parramatta NSW	Kasim Chalabi
15. Roselands Mosque	Roselands NSW	Raby Ayoubi
16. Albayan Institute and Mosque	Regents Park NSW	Fady Taha
17. Bankstown Mosque	Bankstown NSW	Usaid Khalil
18. Islamic Association of Western Suburbs Sydney	Rooty Hill NSW	Mohamad Nasib
19. Greenacre Mussallah	Greenacre NSW	Walid Sabouni
20. Alnoor Mosque	Granville NSW	Imam Omar Elbanna
21. Ashabul Alkahf	Wiley Park NSW	Imam Chalidin Yacob

Organisation Name	Suburb	Representative
22. Abu Hanifah Institute	Lidcombe NSW	Imam Wesam Charkawi
23. Carramar Mosque	Carramar NSW	Imam Tahar Michroui
24. Auburn Islamic Community Centre	Auburn NSW	Mohammad Zoabi
25. Islamic Malay Australian Association NSW	Arncliffe NSW	Ahmad Suberman
26. Islamic Forum for Australian Muslims	Mount Druitt NSW	Usaid Khalil
27. Quakers Hill Masjid	Quakers Hill NSW	Imam Yousef Hassan
28. Somali Muslim Association	Auburn NSW	Abdulkadir Jimale
29. Centre for Cultural Relations	Fairfield NSW	Ahmad Higazi
30. Granville Youth Association	Granville NSW	Ismail Sirdah
31. Islamic Practice & Dawah Circle	St Marys NSW	Ertiz Chowdary
32. Markaz Imam Ahmad	Liverpool NSW	Mohammad Rima
33. Qubaa Mosque	Mount Druitt NSW	Zeeshan Jawed
34. Australian Islamic Society of Bosnia & Herzegovina	Penshurst NSW	Enes Topalovic
	Smithfield NSW	Enes Topalovic
35. Australian Islamic House	Liverpool NSW	Omar Agha
36. Newcastle Muslim Association	Newcastle NSW	Shahrial Ahnaf
37. Afghan Community Support Association NSW	Blacktown NSW	Mohammad Nader Azamy
38. Islamic Society of Many Warringah	Dee Why NSW	Firas Bawazier
39. Deccan Australian Welfare Association	Lakemba NSW	Hyder Khan
40. Malaysian Muslim Solidarity Association	Bankstown NSW	Mohamad Zakaria
41. Iraqi Muslim Association	Greenacre NSW	Hamid Mafragi
42. Centre of Islamic Dawah and Education NSW	Mount Druitt NSW	Luqman Dereinda
AlHijrah Mosque	Tempe NSW	Luqman Dereinda
43. Hills District Muslim Society	Hills District NSW	Tarek Akari