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## **Call for input: Advocacy of Hatred Based on Religion or Belief - Transformative Responses**

Dear Dr Ghanea,

The Australian Human Rights Commission (Commission) welcomes your examination of the advocacy of hatred based on religion or belief, to be included in your thematic report delivered to the 55th session of the UN Human Rights Council.

In 2020, the Commission was pleased to provide input to previous UN Special Rapporteur, Mr Ahmed Shaheed, for his report on anti-Muslim hatred and discrimination. This was a focus of one of our key projects at the time, which culminated in the [Sharing Stories of Australian Muslims report](#), published in 2021.<sup>1</sup>

The advocacy of hatred based on religion or belief remains a significant issue in Australia and a matter of serious concern for the Commission. At the time of this submission, hatred based on religion or belief in current geopolitical contexts is giving rise to alarming impacts. The devastating repercussions, including loss of life, underscore the imperative for urgent action to address this matter on both domestic and international levels.

Just this week, on 23 October 2023, the Islamophobia Register Australia published a media release stating that reports of Islamophobia have increased ten-fold in the two-week period immediately following the latest escalations of conflict between Hamas and Israel.<sup>2</sup> Reports of an increase in antisemitism have also been shared with the Commission by peak organisations and have been reported in the media.<sup>3</sup>

The Commission is privileged to have this pertinent opportunity to contribute toward examining and addressing the advocacy of hate based on religion or belief with the urgency it demands. Within the scope of the word limit, the Commission has responded to Questions 1, 4, 5 and 7 provided in the call for input.

Yours sincerely



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- **How, if at all, is advocacy of hatred defined in legal and policy frameworks, and how does it relate to intolerance, discrimination, and violence based on religion or belief?**

Australia currently lacks defined national frameworks regarding advocacy of hate, including that which is based on religion or belief. Australia has very limited protections in national laws against religious discrimination, a pressing issue for which the Commission has publicly indicated its support for more than 20 years across various domestic and international legal and policy contexts.

Advocacy of hate, including that which is based on religion or belief, is only captured in federal legislation in the *Criminal Code Act 1995* (Cth). Section 80.2A makes it illegal to urge force or violence against members of groups where ‘the group is distinguished by race, religion, nationality, national or ethnic origin or political opinion’. The Commission notes this provision has never been used and is widely regarded as unfit for purpose.<sup>4</sup> In addition, while section 474.17 of the Code also makes it unlawful to use a carriage service in a way that a reasonable person would regard as, ‘in all the circumstances, menacing, harassing, or offensive’, use of this provision with respect to religious harassment is not notable.<sup>5</sup>

Section 18C of the *Racial Discrimination Act 1975* (Cth) defines advocacy of hatred based on ‘race, colour or national or ethnic origin’ as a public act that is ‘reasonably likely in all the circumstances to offend, insult, humiliate or intimidate another person or group of people’. Currently, there may be some limited protection of religion under the *Racial Discrimination Act 1975* (Cth) where the courts have found that members of particular groups or faiths, such as Sikhs and Jews, are covered on the ground of ‘ethnic origin’.<sup>6</sup> However, other religious groups, such as Muslims and Christians, have been found not to constitute a group with a common ‘ethnic origin’.<sup>7</sup> Although the Committee on the Elimination of Racial Discrimination has said that the Convention’s terms are flexible and extend to other ethno-religious groups, such as Muslims, this approach to reading the Convention (outside its explicit terms) has been rejected by Australia’s High Court.<sup>8</sup>

There is a limited protection on the basis of discrimination in employment on the ground of religion, in implementation of the ILO Convention 111, but this has no

remedial pathway to the courts.<sup>9</sup> The *Fair Work Act 2009* (Cth) also provides some limited protection against religious discrimination in the workplace by prohibiting an employer from taking adverse action against an employee or prospective employee because of their religion. These protections do not specifically address advocacy of religious hatred.

The Commission has advocated for expanded protections for religion in federal discrimination law, not limited to employment, and with full access to judicial remedies.<sup>10</sup>

In state and territory legislation, advocacy of hatred – also termed vilification – is defined largely using similar wording: that the act must be public and ‘incite hatred towards’, ‘serious contempt for’, or ‘severe ridicule’. This generally captures racial vilification, with only the Australian Capital Territory, New South Wales, Queensland and Victorian laws also providing for this on the basis of religion or belief.

The Commission acknowledges the shortcomings of a lack of such provisions federally. New South Wales, Queensland and Victorian legislation also have additional provisions for ‘serious vilification’ which is defined as incitement or threats of physical harm or violence.

- **How does hatred based on religion or belief overlap with other grounds of discrimination? How does it complicate the challenge and required responses?**

The Commission is a proponent of intersectional approaches and acknowledges that hatred based on religion or belief may overlap with and compound discrimination across various legally-protected attributes – including but not limited to – race, gender and disability.

Instances of Islamophobia are primarily recorded in Australia by the Islamophobia Register, a community-based organisation. The Register’s 2023 report, [Islamophobia in Australia 2014–2021](#), highlights race and gender as two key intersections in experiences of Islamophobia. In offline cases (cases in the physical world) where the alleged perpetrator was Anglo/European, the majority

of the victims appeared to have a Middle Eastern or Arab background (47%) followed by Pakistani/Bangladeshi (18%), and Asia Pacific (13%).<sup>11</sup> In addition, 78% of victims who experienced offline Islamophobia were women, the majority of whom were wearing a hijab (headscarf).<sup>12</sup>

As noted earlier in this document, Australia's federal law does not provide protections against religious discrimination unless it involves the limited ethnoreligious groups found to be covered under the *Racial Discrimination Act 1975* (Cth) or concerns discrimination in employment. However, even in relation to these groups, federal discrimination law is fundamentally ill-equipped to respond to intersectional discrimination. A person who has suffered intersectional discrimination can be required to meet different legal tests for different attributes (such that a person has different elements of proof) and litigate discrimination in relation to each attribute separately, despite harm being experienced in a single instance of discriminatory conduct. The Commission's 2021 report, ['Free and Equal: A reform agenda for federal discrimination laws'](#), acknowledges that this process is ultimately burdensome and less effective, and that discrimination law must be reframed as intersectional with protections for different attributes working together easily.<sup>13</sup>

- **What are some of the instances and effects of the advocacy of hatred based on religion or belief:**
  - a. **For adherents to various religions and beliefs, individually and collectively;**
  - b. **Within religious and belief communities;**
  - c. **In day-to-day violations or as embedded as drivers of marginalisation and violence;**
  - d. **As crystallised into systemic and structural disadvantage against some target groups;**

The advocacy of hatred based on religion or belief remains a significant issue in Australia and a matter of serious concern for the Commission. Faith-based communities continue to be harmed by hate in both online and offline spaces. The Islamic Council of Victoria's 2022 report, ['Islamophobia in the Digital Age: a Study of Anti-Muslim Tweets'](#), the Online Hate Prevention Institute's ['Online Antisemitism in Australia 2023'](#), and the Australian Sikh Community's ['Report on rise of hate crimes against Sikhs, our religious places, events and business in Australia'](#)

(2023) are recent publications that document and analyse online religiously-motivated hate, and emphasise this growing concern. In drawing on the experiences of these communities, the Commission does not mean to suggest that other faith-based communities in Australia are not also subjected to hate.

The Online Hate Prevention Institute reports that Jewish people in Australia continue to be targeted by antisemitic hate on various social media platforms, including Holocaust denial that distorts or undermines the historical reality of the genocide, incitements of violence towards Jewish people and Jewish property, and dehumanising language that promotes harmful stereotypes of Jewish people.<sup>14</sup>

A report published by the Australian Sikh community in February 2023 discusses a rise in acts of hate against the community by what they describe as Hindutva extremists (as distinguished from the Hindu community).<sup>15</sup> The community states that Sikh people in Australia have been subjected to ‘dehumanising and hateful’ rhetoric from Hindutva extremists, including vandalism (graffiti) at Sikh places of worship and on promotional material for a community referendum on ‘Khalistan’, verbal abuse and threats, and online hate.<sup>16</sup>

Australian Muslim and Jewish community organisations have analysed the effects of advocacy of hatred towards their respective target communities. This includes the physical and mental effects on an individual level, noting the impacts of even witnessing online hate when a person themselves is not the individual target. They also note the effects on a collective level, and how incidences of antisemitism and Islamophobia are self-perpetuating catalysts of further marginalisation, discrimination and violence towards target communities.

The Commission has consistently identified that Australia lacks comprehensive national data on instances of advocacy of hatred based on religion or belief.<sup>17</sup> The data and evidence relied on in this report underscores that much of the available information is generated by religious communities themselves. Although Muslim and Jewish communities in particular have been collecting and analysing instances of Islamophobia and antisemitism respectively, there is currently limited data collection and analysis into the experiences of hate in other religious communities in Australia.

While both Muslim and Jewish communities have concerningly indicated a rise in incidents of hate since they began their data collection, these reported incidents are only a proportion of actual incidents and there remains a lack of robust, comprehensive and comparable national data regarding prevalence, including as it affects other faith-based communities not referenced in this submission.<sup>18</sup> In consultations for the *Sharing Stories of Australian Muslims* project, the Commission heard that these incidents are so pervasive for the Muslim community that nearly every Muslim participant was able to provide an example of someone within their immediate family or friendship group who had been a victim of harassment or a hate or vilification incident.<sup>19</sup>

The Commission has highlighted in numerous places, including our [National Anti-Racism Scoping Report](#) and [Sharing Stories of Australian Muslims report](#), significant concern in relation to instances of online advocacy of hatred, which Australia does not currently have adequate frameworks to address. Research by the Online Hate Prevention Institute documents the proliferation of antisemitic content across social media that is 'falling through the cracks' in the absence of stronger moderation policies by digital platforms.<sup>20</sup> As part of the Commission's *Sharing Stories of Australian Muslims* project, an independent organisation conducted a national survey in which 1,017 Australian Muslims participated, and found that unfavourable treatment due to their religion most frequently occurred online.<sup>21</sup> This is likely due to the ease in which perpetrators can harass victims through fake profiles or pseudonyms coupled with the lack of regulation that exists online, allowing perpetrators to evade traditional laws.<sup>22</sup>

The media has been identified as a significant driver of Islamophobia when it platforms negative discourse or events related to Muslims. Participants in the *Sharing Stories of Australian Muslims* project raised concerns about the impact of overwhelmingly negative and unbalanced media and political narratives on the safety and wellbeing of community members and how the broader Australian community perceived and reacted to Australian Muslim communities.<sup>23</sup> The Islamophobia Register has found that Islamophobic incidents increased when events such as the 2019 Christchurch terrorist attacks were highlighted in media discourse.<sup>24</sup> Its 2019 report identified that reporting of offline cases of Islamophobia increased by four times and online cases by 18 times within the two weeks after the attacks.<sup>25</sup> It is worthwhile noting that the event being

platformed in the media was identified as contributing to Islamophobia, even in a situation where Muslims were the victims and not the perpetrators.

Research conducted for the Islamic Council of Victoria confirms the correlation between negative news related to Islam and heightened cases of online Islamophobia, including in reporting of negative messaging made by politicians.<sup>26</sup>

The Australian Sikh community has also raised concerns on what they see as biased or one-sided reporting by certain Hindu community news sources on tensions between Hindu and Sikh communities that contribute to negative stereotypes of Sikh people as violent.<sup>27</sup>

This research demonstrates how influential media narratives, both online and offline, are in instilling negative portrayals of certain religious communities that contribute to the discrimination, violence, marginalisation and subsequent systemic bias that many individuals within the communities continue to experience.

- How is hatred based on religion or belief countered at different levels, by State actors alone or in partnership with other actors, and to what effect? Have these resulted in prohibitions on expression and, if so, please detail how these measures are consistent with upholding international human rights obligations?**

At the national level, Australia has recently introduced a bill to prohibit the public display and trading of Nazi and Islamic State symbols.<sup>28</sup> The Commission has, on this occasion and elsewhere, expressed its in-principle support of proposed national prohibitions against the public display and trading of established symbols of hatred based on religion or belief.<sup>29</sup>

Upon consideration of the recent federal bill, the Commission is reassured that the Statement of Compatibility with Human Rights completed in accordance with *Australia's Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) raised no matters of concern regarding the Bill's operation as it relates to the right of freedom of expression contained in Article 19 of the International Covenant on Civil and Political Rights (ICCPR). The Commission also considered that the Bill is compatible with the Convention on the Elimination of All Forms of Racial



Discrimination (CERD), and therefore consistent with upholding international human rights obligations. Further details are included in the Commission's submission to the Parliamentary Committee overseeing the bill.<sup>30</sup>

Several Australian states and territories have legal prohibitions against the public display of symbols and gestures related to hatred on religion of belief. New South Wales, Victoria, and Tasmania have criminal bans of the public display of symbols and gestures of Nazi ideology, while the Australian Capital Territory has criminalised online and physical public display of Nazi symbols only. Queensland has recently enacted a criminal ban on the public display, distribution, and publication of prohibited hate symbols, but does not currently prescribe the specific hate symbols to be banned, which will be identified later by the Queensland Attorney-General.

All these criminal prohibitions can entail fines and/or imprisonment as penalty. Exemptions to the ban for religious, academic, and other reasonable purposes are common across the jurisdictions and prescribed in respective legislation. Specifically, the public display of the swastika in connection to Buddhism, Hinduism, or Jainism is exempted from criminalisation in all existing legislation and bills.

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<sup>1</sup> The Australian Human Rights Commission, Sharing the Stories of Australian Muslims (Report, 2021)

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

<sup>2</sup> The Islamophobia Register Australia, Reports of Islamophobia continuing to increase at staggering rate – now tenfold post Israel-Palestine escalations (Press Release, 23 October 2023) <<https://islamophobia.com.au/publications/press-releases/>>.

<sup>3</sup> Special Broadcasting Service, As the Hamas-Israel war rages, Islamophobia and antisemitism are rising in Australia (News article, 28 October 2023)

<[As the Hamas-Israel war rages, Islamophobia and antisemitism are rising in Australia](#)>.

- <sup>4</sup> The Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, 2021) 45.  
 < <https://humanrights.gov.au/our-work/race-discrimination/publications/sharing-stories-australian-muslims-2021>>.
- <sup>5</sup> The Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, 2021) 45.  
 < <https://humanrights.gov.au/our-work/race-discrimination/publications/sharing-stories-australian-muslims-2021>>.
- <sup>6</sup> The Australian Human Rights Commission, 'Free and Equal: A reform agenda for federal discrimination laws' (Report, 2021) 262.  
 <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>>.
- <sup>7</sup> The Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (Report, 2021) 262.  
 <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>>.
- <sup>8</sup> The Australian Human Rights Commission, *Sharing the Stories of Australian Muslims* (Report, 2021) 43.  
 < <https://humanrights.gov.au/our-work/race-discrimination/publications/sharing-stories-australian-muslims-2021>>.
- <sup>9</sup> Australian Human Rights Commission, *Free & Equal: A reform agenda for federal discrimination laws* (2021), 2.2.
- <sup>10</sup> Australian Human Rights Commission, *Free & Equal: A reform agenda for federal discrimination laws* (2021), 2.2 (c).
- <sup>11</sup> Derya Iner, Ron Mason & Chloe Smith, *Islamophobia in Australia 2014-2021* (Report 4) 29.  
 <[https://researchoutput.csu.edu.au/ws/portalfiles/portal/313346505/UPDATED\\_IslamophobiaInAustralia\\_ReportIV\\_digital\\_lowres\\_spread\\_update.pdf](https://researchoutput.csu.edu.au/ws/portalfiles/portal/313346505/UPDATED_IslamophobiaInAustralia_ReportIV_digital_lowres_spread_update.pdf)>/
- <sup>12</sup> Derya Iner, Ron Mason & Chloe Smith, *Islamophobia in Australia 2014-2021* (Report 4) 26.  
 <[https://researchoutput.csu.edu.au/ws/portalfiles/portal/313346505/UPDATED\\_IslamophobiaInAustralia\\_ReportIV\\_digital\\_lowres\\_spread\\_update.pdf](https://researchoutput.csu.edu.au/ws/portalfiles/portal/313346505/UPDATED_IslamophobiaInAustralia_ReportIV_digital_lowres_spread_update.pdf)>/
- <sup>13</sup> The Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (Report, 2021) 25.  
 <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>>.
- <sup>14</sup> The Online Hate Prevention Institute, *Online Antisemitism in Australia 2023* (Report, 2023) 18-71.
- <sup>15</sup> Sikh Community, *Report on rise in hate crimes against Sikhs, our religious places, events and businesses in Australia* (Report, 2023). Copy unavailable online. Please contact the Australian Human Rights Commission for a copy of the report if needed.
- <sup>16</sup> Sikh Community, *Report on rise in hate crimes against Sikhs, our religious places, events and businesses in Australia* (Report, 2023) 2, 8-15 and 18-19.
- <sup>17</sup> The Australian Human Rights Commission, *Freedom of Religion in Australia: a focus on serious harms* (Position Paper, 2020) 14-16.  
 <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/freedom-religion-australia-focus-serious-harms-2020>>/
- <sup>18</sup> The Australian Human Rights Commission, *Freedom of Religion in Australia: a focus on serious harms* (Position Paper, 2020) 17.  
 <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/freedom-religion-australia-focus-serious-harms-2020>>/

- <sup>19</sup> The Australian Human Rights Commission, Sharing the Stories of Australian Muslims (Report, 2021) 65.  
< <https://humanrights.gov.au/our-work/race-discrimination/publications/sharing-stories-australian-muslims-2021>>.
- <sup>20</sup> The Online Hate Prevention Institute, Online Antisemitism in Australia 2023 (Report, 2023) 2, 18-71.
- <sup>21</sup> The Australian Human Rights Commission, Sharing the Stories of Australian Muslims (Report, 2021) 53.  
< <https://humanrights.gov.au/our-work/race-discrimination/publications/sharing-stories-australian-muslims-2021>>.
- <sup>22</sup> The Australian Human Rights Commission, Sharing the Stories of Australian Muslims (Report, 2021) 53.  
< <https://humanrights.gov.au/our-work/race-discrimination/publications/sharing-stories-australian-muslims-2021>>.
- <sup>23</sup> The Australian Human Rights Commission, Sharing the Stories of Australian Muslims (Report, 2021) 65-72.  
< <https://humanrights.gov.au/our-work/race-discrimination/publications/sharing-stories-australian-muslims-2021>>.
- <sup>24</sup> Derya Iner, Islamophobia in Australia (Report No 3, 2019) 89-128 .  
<[https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia\\_Report\\_3\\_2022\\_LR](https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia_Report_3_2022_LR)>.
- <sup>25</sup> Derya Iner, Islamophobia in Australia (Report No 3, 2019) 23.  
<[https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia\\_Report\\_3\\_2022\\_LR](https://researchoutput.csu.edu.au/ws/portalfiles/portal/208330970/Islamophobia_Report_3_2022_LR)>.
- <sup>26</sup> Umar Butler, Islamophobia in the Digital Age: A Study of Anti-Muslim Tweets (Report, 2022) 8-9.  
<<https://apo.org.au/sites/default/files/resource-files/2022-08/apo-nid318935.pdf>>.
- <sup>27</sup> Sikh Community, Report on rise in hate crimes against Sikhs, our religious places, events and businesses in Australia (Report, 2023) 15, 16-18.
- <sup>28</sup> Parliament of Australia, *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023* (Cth) (2023)  
<[https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/Bills\\_Search\\_Results/Result?bld=r7048#:~:text=Amends%20the%3A%20Crimes%20Act%201914,service%20for%20violent%20extremist%20material](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r7048#:~:text=Amends%20the%3A%20Crimes%20Act%201914,service%20for%20violent%20extremist%20material)>
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- <sup>30</sup> The Australian Human Rights Commission, Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (Cth) (Submission to the Parliamentary Joint Committee, 31 July 2023)  
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