ABOUT THE UNVEILED INSTITUTE

The Unveiled Institute is a Canberra-based think tank born out of a desire to help government, industry, and community groups to better understand the views and needs of diverse groups of people in Australia.

Our aim is to produce viable, sensible recommendations to overcome social issues relating to cultural diversity, socioeconomic disadvantage, gender-based violence, and social exclusion through evidence-based policy.

Our team is has worked in government, private, and non-profit sectors and brings a deep and personal understanding of the needs of communities that are affected by the actions of these organisations. We call on our experiences and networks to critically assess the intricacies and sensitivities that can make or break a policy.

We are letting go of established norms in favour of delivering real world solutions.

The Unveiled Institute is a non-profit body with the purpose of promoting mutual respect and tolerance between groups of people in Australia by:

- actively countering discrimination and bringing widespread understanding and tolerance among all sectors of the community;
- undertaking research to develop policy positions and advice for public and private institutions reflecting multiculturalism, social diversity and changing demographics;
- collaborating with domestic and international organisations;
- organising and attending community events and forums aimed at promoting social harmony and cohesion; and
- encouraging co-operation and communication between different community groups.

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INTRODUCTION

The Unveiled Institute makes this submission regarding the Religious Discrimination Bill 2019 (the Bill) in support of Australia’s Muslim communities.

We feel it is important to note our view that the consultation period for such an important piece of legislation has been woefully inadequate. We have previously advised the Australian Government that short consultation periods cannot be managed by culturally and linguistically diverse groups. Given the limited timeframe, we have been unable to reach out to our networks to seek the views of those who are likely to be affected by the Bill. We recognise that our submission does not sufficiently reflect the views of the broader Muslim community, nor has it considered other religious minorities. We reiterate our previous message that religious and cultural minorities in Australia have diverse views and lived experiences which should be understood by decision-makers. A token sample of views should not be used to suggest that consultation has been undertaken with a particular community.

We understand that this submission has been circulated to several organisations and is likely to be provided through a number of avenues. We recognise that this is not an ideal way of providing feedback. However; this outcome is to be expected when such a rushed consultation has taken place. There is only so much that our resource-strapped organisations can do.

We welcome dialogue regarding this matter and, as always, remain open to providing insight to departmental officers and Ministers alike regarding the realities of consulting with diverse communities.

SUMMARY

The Australian Government should be commended for taking a step towards protecting a person’s ability to believe and practice their faith without being subject to discrimination. But the Religious Discrimination Bill 2019 (the Bill) misses the mark in three key ways.

First, the Bill offers zero-protectons for Australian-Muslims where it actually counts. The Bill’s focus on prohibiting discrimination in certain areas of public life ignores the reality that most attacks on Australian-Muslims do not come in the form of being refused a job interview or government services. Rather, Australian-Muslims continue to struggle daily against unrelenting and unchecked speech and conduct that is dehumanising, vitriolic and violent, including that which threatens or inflicts physical harm on men, women and children of the Islamic faith. The Bill does not try and do anything for this despite the claim that it ‘ensure[s] that all people are able to hold and manifest their faith...in public without interference or intimidation’.

1 Frankly, if a woman is unable to catch public transport on her own due to the real fear of being physically or verbally assaulted for wearing a headscarf, then she’s less likely to make it to a job interview to begin with.

Second, the Bill fails the Government’s own Deregulation Agenda by introducing yet another piece of anti-discrimination legislation when amending the *Racial Discrimination Act 1975* (the Racial Discrimination Act) to give effect to its objectives would be simpler and probably more effective.

Third, the way the Bill itself has been drafted is problematic as its inconsistencies and ambiguities are likely to result in confusion for the general populace and unnecessary litigation. A mandatory review process after two years of operation should be built into the Bill.

Overall, it seems that the Bill has been rushed, consultation has been rushed, and the Australian Government has not heeded the advice of the Australian Human Rights Commission that any legislative reform is carefully tailored to address the precise problem in relation to freedom of religion.\(^2\) It is our view that if a new piece of legislation is being created to address religious discrimination, it should take a wholistic approach to the matter and actually address the problem of religious discrimination as experienced by religious communities.

The following issues demonstrate how taking short-cuts to address a multifaceted and complex problem is likely to produce a less than satisfactory result for the Australian public.

### ISSUE 1: The Bill lacks any effective protection for freedom from religious vilification and other forms of harmful and hostile behaviour levelled at Australian-Muslims, or indeed, members of any faith community.

Of all the categories of harmful conduct reportedly experienced by Australian-Muslims, the Bill focusses on “discrimination” alone.

As can be seen from the above graph taken from the report Islamophobia in Australia 2014-2016\(^3\) (the *Islamophobia Report*), out of 243 reported and verified instances of behaviour apparently motivated by Islamophobia between September 2014 and December 2015, only

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two were related to the category of “social exclusion or discrimination” and 18 related to “discrimination/harassment by authorities”. While the Bill may go some way to protect against discrimination, it does not provide any mechanism for dealing with the significant majority of incidences comprised of verbal abuse or threats (186), physical assault (28), damage/graffiti (25), written harassment (24) and non-verbal harassment (19).

The Islamophobia Report sets out nine incident types under which data received through the Islamophobia Register was classified and accompanied by examples. This is extracted in full below to give a more complete sense of what Australian-Muslims have been facing for the larger part of the past two decades:

1. **Physical assault:** Any form of physical transgression against persons or their properties.

   Example: Throwing eggs, abuse, screaming (Case 230), grabbing the breast of a young Australian Muslim woman and repeatedly saying “we are going to bomb you all” (Case 226) and grabbing the victim by the neck and hair, forcing her head into the wall of the train carriage several times (Case 199).

2. **Verbal abuse/threats:** Direct or indirect insults, offensive or intimidating speech.

   Example: Calling the victim “evil and violent” for wearing the hijab and ranting vitriol for 13 minutes (Case 151) and threats like “we bury you in pig bits to match your gutless yellow spines. Your 72 virgins won’t touch you then” (Case 22).

3. **Non-verbal abuse:** Mocking gestures, stalking, negative stares and use of inappropriate images. This differs to physical assault as there is no direct physical contact or transgression to one’s person or property.

   Example: Placing an innocent woman under scrutiny by making a false report to the police (Case 232), and intimidating a young Australian Muslim woman by lingering around and following her in between the aisles and having “his fist clenched and looking rather irritable” (Case 213).

4. **Written abuse:** Letters and messages including pamphlets and advertisements with Islamophobic content that is not necessarily graffiti.

   Example: Hate propaganda material distributed in mailboxes in a local area (Case 141) or a threatening letter left at the victim’s door (Case 110).

5. **Damage/graffiti:** Vandalism of Muslim places of worship or public/private spaces frequented by Australian Muslims. This also includes public spaces such as the beach or public transport that has Islamophobic graffiti.

   Example: Graffiti found on a toilet door at a construction site in Mascot “Burn all towelheads,” “Kill all Lebs” (Case 182). Leaving a mutilated pig outside mosque (Case 82) is also counted as vandalism and graffiti.39
6. **Offensive media content:** Any form of media, excluding social media, that publishes articles or posts that are against Australian Muslims – television, newspaper and/or online. They were taken into account mostly when they were reported to the Register by third party reporters.

Example: A reporter posted the Register a newspaper article [with a large heading called “ISLAM’S VIOLENT TENDENCIES” accompanied by a picture of Adolf Hitler] noting that “it is horrible...(and) obviously done deliberately” (Case 240).

7. **Hate mail posted to the Register:** Defaming and attacking the Register is another explicit form of Islamophobia.

Example: A “greeting email” to the Register: “Hi, f*** sand nigger Muslims. Bye. Aye what do you think of the recent events you terrorist kebab” (Case 224) and blaming the Register for “crying wolf” and explaining her frustration for “having to be tolerant of the intolerant” (Case 10).

8. **Social exclusion and discrimination:** The victim is excluded from work, school and/or social events.

Example: Suspension of a student without investigation because he allegedly “said the word ISIS” (Case 245).

9. **Discrimination/harassment by authorities (and government agencies):**

Unfair treatment by public and private sector bodies and authorities who can be any person or organisation that has political, legal or administrative power and control. This also includes discrimination when applying for jobs and seeking help from institutions.

Example: A solicitor visiting her client at a correctional facility and being told by the officer “we don’t know if you’re a terrorist” (Case 105) and a local councillor stirring up hatred of Australian Muslims and thereby legitimising individual vilification in that suburb (Case 138).

The Australian Government should be telling Australian-Muslims how it justifies using this crucial opportunity to only deal with a small fraction of the legitimate concerns the community holds for its safety. For instance, in what ways would the Bill improve the experiences of Australian-Muslims dealing with the following real scenarios?

“...The whole incident occurred over approximately 20 mins. Some of the things he repeatedly said to me include: ‘you Muslim pig, I’m going to kill you,’ I’ll cut your head off you Muslim dog, get out of this country you’re not Aussie, stuff about Muslims being terrorists, a risk to the country and Muslims bombing everyone. I know he said more than this, however, the thing he kept repeating was that he was going to slit my throat as I was a Muslim dog/pig. The only thing I said to him during the entire thing was that I was Aussie too (said twice)...” (Case 85; emphasis added).  

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4 Islamophobia Report (p. 46).
“...I was walking with my head down and a group of young males yelled out ‘ISIS B*****’ ‘go back to where you came from’ and snickered and said ‘shh or she’ll behead you.’ And followed me down the street. None of the train staff helped me out or stopped them.” (Case 26).  

“...with the visibility of anti-halal protests and online campaigns [during 2014 and 2015], there was significant anti-halal hate rhetoric among Australian Islamophobes. Halal death, slaughtering and slitting throat related death threats increased to a total of 21, while beheading and slaughtering combined death threats were the most prevalent of all (N=32).”  

“One month later police were investigating a fire at the Al-Taqwa mosque in Perth, which coincided with the end of Eid al-Adha. As the police investigated this suspected arson attack, community leaders were asking ‘why are they hating us’ (cited in The West Australian 2018). Disturbingly, such events are becoming normalized with insurance companies reported as being unwilling to insure the mosque because the risk of vandalism was deemed to be high.”  

“The threat types appear to be influenced by the rhetoric of the day. Death threats relating to halal killing, slaughtering and slitting throats were strongly linked to the anti-halal campaigns that were actively in force during 2014 and 2015 (25.6%; N=21). Beheadings by ISIS terrorists, which were widely covered in the media and through social media especially in 2014, influenced Islamophobic death-threat rhetoric. Apart from 11 direct references to beheadings, the idea of killing by chopping off the head was replicated in halal-slaughtering related threats (25.6%; N=21). So was killing in different ways (37.8%; N=31) including burying Muslims, wiping them out, Muslim hunting, genocide and the desire to kill Muslims before they spread. Articulating and encouraging Muslim genocide stimulated neither public attention nor any legal enforcement. Stoning to death, halal slaughtering/slitting the throat and beheadings were perceived as revenge in the same way. The other types of killings (50%; N=41) apparently remained as one way of dealing with the ‘enemy.’”
Wanting to harm Muslims is a common theme of online Islamophobic conversations.
Australian-Muslims have been dealing with these kinds of attacks as the new normal. When such incidences are not ignored by the victim, they are usually handled on an individual level, sometimes with the backing of community organisations, but almost always with very little if any support from the Australian Government. Any suggestion that such matters should be handled by the police ignores the patchy and inconsistent state and territory legislation that would apply in responding to the above examples, and general unwillingness to either legislate or prosecute in this space.

Thus; although we recognise the that the concerns we raise here may be addressed by several criminal provisions or even tort actions; our anecdotal experience demonstrates that these mechanisms are insufficient at best. It is our view that the creation of a specific religious discrimination bill necessitates a broader review of the legal protections available to religious groups and an assessment of whether they are sufficient or not. Adding to this legislative framework without such a review is problematic, in our view.

However; as the Australian Government would know, legislation—especially anti-discrimination legislation—plays a powerful role in shaping social norms and perceptions of what is and what is not acceptable conduct. Or in other words, “if you build it, he will come”. Thus, it is not unreasonable to suggest that the Bill should provide better protections for religious groups against the very real threats of violence which have been reported by multiple groups, including multiple Muslim communities. That this Bill misses the opportunity to serve communities in a way that would make a difference is disappointing. It perpetuates the belief that “[w]ith the emphasis on so-called Islamic extremism, right-wing extremism is minimized in public and political arenas.” The Australian Government is requested to comprehensively explain what, if anything, is being done to address this pressing matter.

We understand that the focus of the Australian National Imams Council’s submission to this same inquiry is similarly on the lack of protections from vilifying speech or conduct towards Australian-Muslims. We cite support for ANIC’s submissions in this regard.

In addition, we have strong concerns relating to the disproportionate impact on women, and the number of children and young people who are exposed to or directly subject to speech and behaviour motivated by Islamophobia. Even if only a single child is counted for each case, the number of children exposed to Islamophobia is still concerning as it reaches 47.7% (N=63 out of 132) within the range of offline cases. Most of the perpetrators faced no social or legal repercussions and parents remained helpless. In addition to the indirect abuse suffered by children who witnessed their parents exposed to a range of Islamophobic incidents, some Australian Muslim children appear to be exposed to direct harassment at very early stages of their lives. In the following incident, a neighbour came to the victim’s door and insulted not just the victim, but also her baby:

“... She [the perpetrator] is saying things like, ‘people like you’ all the neighbours are unhappy with you; ‘cave women,’ you have a stupid baby, we know what you people are like,’ ‘I curse

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9 Poynting & Briskman 2018.
10 Islamophobia Report (p. 46).
you every night,’ ‘why aren’t you working’... (please note that I am on maternity leave because my baby is only 18 months old)...

I really feel harassed by her as she expressed so much hate especially to my baby.” (Case 178, emphasis added)

The aggression extended to physical attacks on young children. A witness reported to the Register that:

“A little boy was kicked by a woman riding on a bike outside and she swore at the boy’s parents and told them to go back to their country and put bombs there.” (Case 247).

As observed by the authors of the Islamophobia Report, “regardless of whether Australian Muslim children experience Islamophobia explicitly or through implicit means, there is no doubt that exposure to such abuse raises significant concerns in regard to possible psychological and social impacts.” Further:

Studies on the psychology of violent extremism point to similar emotional pathways that start with anger and gradually intensify as feelings of contempt, dehumanisation, disgust, and a desire to harm. Contempt and dehumanisation reinforce an ‘us/them’ or ‘superiority/inferiority’ dichotomy that has no room for tolerance. Contempt and dehumanisation are “a stepping stone to legitimise extreme actions.”

To further demonstrate the destructive effect of Islamophobia on individuals, the Islamophobia Report cites that:

Islamophobia affected Muslim victims’ daily routines to such an extent that some women were afraid to leave their homes, use public transport or go out in public on their own... Some of the victims suffer from ongoing psychological disorders, such as insomnia and varying levels of depression and anxiety.

There have also been other reports that highlight the harmful impact of anti-Muslim provocations (Poynting and Noble 2004; Dreher 2005). As Ta-Nehisi Coates (Coates 2015, p. 10) eloquently writes about America’s race history, ‘racism is a visceral experience, that it dislodges brain, blocks airways, rips muscle, extracts organs, cracks bones, breaks teeth.’ This imagery is one that many Australian-Muslims relate to.

The question for the Government is: what is this Bill exactly trying to achieve if it does not even attempt to protect against the most extreme, invidious types of speech and conduct? How can the Bill ‘promote attitudinal change, to ensure that people are judged on their capacity and ability, rather than on generally unfounded negative stereotypes’ when it does not do anything regarding the proliferation of those negative stereotypes to begin with?

11 Ibid. (pp. 50-51).
12 Ibid. (p. 50).
13 Islamophobia Report (p. 66).
14 Ibid. (p. 85)
15 Poynting & Briskman 2018.
16 Explanatory Notes (pp. 2-3).
In the absence of any adequate explanation, the Bill seems an attempt at creating a sense of ‘action’, but feels hollow and politically convenient, designed to reactively deal with isolated incidents such as the termination of Israel Folau’s contract with Rugby Australia.

As recommended by the Australian Human Rights Commission, legislative reform would need to be “carefully tailored to address the precise problem in relation to freedom of religion”. Further, the Australian Human Rights Commission reminds us that “more data is needed on the nature and extent of harm experienced [e.g. for Australian-Muslims] as a result of threats to freedom of religion and belief in Australia” and recommends “that rigorous research with affected communities should be undertaken to assess such harms, and that this research should inform any reform to federal anti-discrimination law.”

Caution and close consultation with all parts of the Australian community who are likely to be “especially affected” (e.g. Australian-Muslims) was urged by the Australian Human Rights Commission. This advice has apparently been ignored in producing the current version of the Bill. However, it is not too late to do better.

**RECOMMENDATION 1:** Include protection against religious vilification and other forms of harmful and hostile behaviour targeting members of faith communities, such as through reflecting relevant sections of the Victorian Racial and Religious Tolerance Act, including added protections for children.

**ISSUE 2:** The Bill lacks clarity and certainty in key respects which is likely to impact on whether it gives full effect to the intention of Parliament. This may lead to unnecessary litigation. In other respects, the Bill appears to offer incomplete protections that do not reflect reality.

*The Bill does not protect anyone from “statements of belief” which are malicious, likely to harass, vilify or incite hatred or violence*

The power to make “statements of belief” must be appropriately tempered. The Bill does not currently appropriately restrain the making of statements in a way that appears of much use for Australian-Muslims. While sub-clause 41(2) appears on its face to offer protection for people to be free from statements of belief that are “malicious, would or are likely to harass, vilify or incite hatred or violence against another person or group of persons”, read properly, it does nothing of the sort.

The legal effect of this provision as currently drafted is simply to state that statements of belief that have these characteristics will not be covered by the exemption offered by sub-clause 41(1) if a complaint of unlawful discrimination is made. The Bill does not make statements of belief that are malicious, likely to harass, vilify, or incite hatred or violence against another person or group of persons unlawful. This is unacceptable.

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17 AHRC Submission (para 129).
18 AHRC Submission (para 129).
19 AHRC Submission (para 135).
The meaning of the phrase “statements of belief” is ambiguous and possibly does not cover discussions relating to a “statement of belief”, nor does it appear to cover conduct or online communications.

The definition of a statement of belief is also limited in that it only talks about “statements of a religious belief”. If this phrase is not clarified, the Bill could stifle discussion and debate about religious beliefs simply because a statement may not meet the test of being a religious belief in and of itself. The protections also do not make provision for fair discussion and debate undertaken in good faith in relation to statements of belief, as opposed to the making of a statement of belief.

It is also noted that only statements of belief are singled out for particular protections. However, the protections do not expressly extend to conduct that is not in the form of a statement. Further, they do not clarify that statements of belief intended to be protected traverse offline and online communications.

The definition of the phrase “religious belief or activity” is unclear and odd.

The definition of religious belief or activity while appearing on its surface to be all-encompassing, does not acknowledge that some forms of “religious beliefs or activities” are cultural. But they may be accompanied by such wide-spread acceptance, such as within particular cultural communities, that they are difficult to distinguish from religious beliefs or activities. The ambit of the Bill is therefore potentially undefined. Given the Bill revolves around religious belief or activity, it is important that further definition and guidance is carefully crafted.

Further, the fact that religious belief or activity is defined to include not holding a religious belief or not engaging in lawful religious activity is a contradiction in terms. It would be clearer to have two separate definitions, being (a) religious belief or activity and (b) a belief or activity connected to not having a religion, that together constitute a new definition, being protected belief or activity under the Act.

It would be good to have a definition for “religion” that more closely accords with the common understanding of that term.

Once religious belief as it is conventionally understood has been carved out from non-religious belief as that term is conventionally understood, consider defining religion by reference to certain principles as the High Court has previously done when trying to give the concept meaning in a legal context. As cited in the Religious Freedom Review report, “[i]n Church of the New Faith v Commissioner of Pay-Roll Tax (Vic), four justices of the High Court adopted approaches to understanding the meaning of ‘religion’ that have proved highly influential. 20

Rather than adopting a definition, Mason ACJ and Brennan J proposed a principles-based approach:

“We would therefore hold that, for the purposes of the law, the criteria of religion are twofold: first, belief in a supernatural Being, Thing or Principle; and second, the acceptance of canons of conduct in order to give effect to that belief, though canons of conduct which offend against the ordinary laws are outside the area of any immunity, privilege or right conferred on the grounds of religion.”

In that same case, Wilson and Deane JJ observed:

“One of the most important indicia of ‘a religion’ is that the particular collection of ideas and/or practices involves belief in the supernatural, that is to say, belief that reality extends beyond that which is capable of perception by the senses. If that be absent, it is unlikely that one has ‘a religion’. Another is that the ideas relate to man’s nature and place in the universe and his relation to things supernatural. A third is that the ideas are accepted by adherents as requiring or encouraging them to observe particular standards or codes of conduct or to participate in specific practices having supernatural significance. A fourth is that, however loosely knit and varying in beliefs and practices adherents may be, they constitute an identifiable group or identifiable groups. A fifth, and perhaps more controversial, indicium ... is that the adherents themselves see the collection of ideas and/or practices as constituting a religion.”

While the Explanatory Notes say the Bill is informed by the approach taken by the High Court in this case, there does not seem to be any reference in this document or the Bill as to whether and how the above principles are intended to be used to interpret religion in the present context.

**The protections afforded to religious body currently do not extend to commercial enterprises that are formed to generate profit consistent with adherence to religious values and beliefs**

Clause 10 of the Bill sets out what can be regarded as an exemption from the prohibition against unlawful discrimination. That is, a religious body does not discriminate by engaging in good faith in conduct that may reasonably be regarded as being in accordance with the doctrines, tenets, beliefs or teachings of the religion in relation to which the religious body is conducted. However, the definition of a “religious body” specifically excludes a body that is conducted in accordance with the doctrines etc. of a particular religion but is engaged solely or primarily in commercial activities. This would exclude and cause unjustifiable hardship to many businesses owned by followers of faiths that do not draw a distinction between the commercial, social and religious spheres. It may lead to practising members of those faiths who are inspired by religious teachings to pursue a productive livelihood in a manner that is consistent with their religion, needing to avoid certain kinds of business activities altogether due to the risk of breaching the provisions of the Bill when making decisions regarding staff, target market, etc. The reason for excluding commercial providers needs to be better understood and carefully considered to avoid unintended consequences.

Provisions relating to discrimination where a person is considered to be counselling, promoting, etc. a serious offence might be inadvertently used to target Australian-Muslims who have long been the subject of campaigns to portray them as terrorists and criminals; they also do not protect people from statements made that counsel, promote etc. a serious offence.
The Bill provides that it is not unlawful to discriminate against a person if that person expresses a particular religious belief, and a reasonable person, having regard to all the circumstances would conclude that in expressing the belief the person is counselling, promoting, encouraging or urging conduct that would constitute a serious offence.

As referred to elsewhere, Australian-Muslims have over the years been subject to all types of spurious allegations linking Islamic teachings and practices with serious offences.

The Muslim Other is positioned not only as culturally incommensurate, but dangerously so: dishonest, criminally inclined, violent, misogynist, homophobic, backward, uncivilized. 21

For instance, women who wear a niqab are sometimes labelled a ‘security threat’, including by politicians, due to unfounded accusations that they are at higher risk of engaging in terrorism or robbing banks etc. This may lead to a person establishing that they ‘reasonably’ considered a woman in niqab to be counselling, promoting, encouraging or urging conduct that would constitute a serious offence. Another example is where halal certification businesses have often been accused of promoting and funding terrorism, for which no evidence has been found.22 But again, such claims are often made irresponsibly and regularly by politicians and the media, thus a person could be excused if they were to form a belief that this was true that is, objectively, ‘reasonable’. Discrimination against such persons would obviously be an unacceptable outcome of this provision.

Similar to commentary in relation to statements of belief, this provision also offers no protection against a person who in expressing a belief, is regarded as counselling, promoting, encouraging or urging conduct that would constitute a serious offence. It simply states that discriminating against that person on the basis of that person’s religious belief or activity would not be unlawful discrimination.

This provision therefore makes Australian-Muslims in particular, due to the normalisation of narratives that portray them as criminals, a target for discrimination. On the other hand, it offers them absolutely no protections should they themselves be the target of the types of religious beliefs referred to in paragraph 27(1)(b) of the Bill.

The Australian Government should properly clarify the circumstances in which discrimination can lawfully occur and what is ‘reasonable’. In addition, the Australian Government should explain the thinking behind allowing discrimination to occur in such cases, while not offering a person the right to make a complaint in relation to the person making such a dangerous statement to begin with.

21 Poynting & Briskman 2018.
RECOMMENDATION 2: The Australian Government should seek to rectify the drafting issues identified above and properly clarify the intent of these provisions to enable proper consideration of the impact of the Bill to occur.

In light of the above problems highlighted with the draft Bill, and recognising that there may be many others which will be pointed out through the present consultations, or are yet to play out, the Bill should include a review mechanism to assess its effectiveness after a period of two years.

ISSUE 3: The Government has not made a compelling case for why it is necessary to introduce an entirely new piece of legislation when amending the Racial Discrimination Act 1975 would likely be simpler, easier for most Australians to understand, and probably more effective.

While acknowledging that the Religious Freedoms Review suggested amending the Racial Discrimination Act or ‘preferably’ creating a new Religious Discrimination Bill, it does not seem the Australian Government has properly thought through this recommendation.

The Racial Discrimination Act has been around for almost 35 years. Most Australians are familiar with it and now accept that discrimination on the basis of one’s race, colour, descent or national or ethnic origin is unacceptable, and in certain cases, unlawful. That Act could simply be amended to include religious belief or activity as another protected attribute. The title of the Act could change to the Racial and Religious Discrimination Act 1975 and references to a person’s race, colour, descent or national or ethnic origin updated with the characteristic of ‘religious belief or activity’. New sections could deal with the making of statements of belief and conduct by a religious body that does not constitute discrimination, and other parts of the Religious Discrimination Bill that are considered unique, and that of course, deal with the challenges outlined above that the Bill is currently silent on. But essentially, the remainder of the Racial Discrimination Act could remain the same.

Failing to integrate the objectives of the Religious Discrimination Bill into the Racial Discrimination Act is problematic. From an optics point of view, the Bill is more likely to be perceived as a strange and foreign incursion on people’s rights and freedoms, causing a great deal of unnecessary panic in the community. The proposed approach draws an artificial line between discrimination based on one’s race, and discrimination based on one’s religion. It is fair to observe that those who are prone to discriminating based on race, ethnicity and culture, are just as prone to discriminating on the basis of religion:

“...those we define as right-wing deplorables do not target only Muslims, as globally and in Australia racism is directed toward non-white immigrants more broadly, asylum seekers/refugees, racialized minorities, and even—in Australia perhaps especially—the nation’s Indigenous peoples.”

It can often therefore be difficult for a person to try and ascertain whether they were discriminated against based on their race or religion, or both. Characteristics such as having a

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23 Poynting & Briskman 2018.
A beard, a turban, a hijab, a cross necklace or possessing a different sounding name can have equal religious and cultural significance. Doing so is probably unproductive. Further, the term ‘ethnic origin’ under the Racial Discrimination Act has been interpreted as including members of the Jewish and Sikh community.

The Government is proposing to have two separate pieces of legislation, establishing different statutory thresholds and grounds for complaint, additional functions for the Human Rights Commission, a new statutorily appointed office holder and forcing people to choose between or make a complaint under both Acts. The approach is likely to hinder rather than assist the effective resolution of complaints, is an unacceptable amount of red tape and waste of public resources, and unnecessary infliction of further stress and anxiety on a complainant. The current proposal fails the Government’s own Deregulation Agenda which it has been advocating for years. Amending the Racial Discrimination Act to more clearly provide protections for members of any religious (or non-religious) community seems consistent, more efficient and fairer.

**RECOMMENDATION 3:** Reduce duplication, red-tape and uncertainty by amending the *Racial Discrimination Act 1975* to include religious belief or activity as a characteristic that a person cannot be unlawfully discriminated on the basis of; and inserting additional provisions addressing situations specific to religious belief and activity following proper consultation.

**CONCLUSION**

To conclude, it is worth making a point about consultation.

In a speech made on 29 August 2019 by the Hon. Christian Porter MP addressing an audience at the Great Synagogue, the Attorney-General said the draft Bill was the result of extensive consultation and would form the basis of extensive consultation over the coming weeks. The Attorney-General made it clear he expected a final draft Bill to be introduced in October and considered by both Houses of Parliament before the end of the calendar year.24

It should be put on the record that allowing one month for public consultations is a woefully inadequate timeframe to consider a package of Bills of this significance and complexity.

Noting the public consultation ends on 2 October, that there are only perhaps three sitting days in October when both Houses of Parliament will be sitting, and that the other sitting weeks for the Senate are likely to be dominated by Senate Estimates, it is unlikely the Bill will be able to be properly debated during this month. The six sitting days in November present the last opportunities to debate and pass the Bill before the end of the calendar year.25 The Senate will also need to conduct its inquiry into the Bill during this limited period. We are concerned at the prospect of a lack of proper scrutiny.

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While we support the objective of strengthening legal protections for freedom of belief and religion, as a matter of priority, there are no compelling reasons for this rushed timeframe. In view of the key problems pointed out in this submission, we urge the Australian Government to take pause and do this properly considering the views of the communities most likely to be affected. Inaction will not yield any results, but hasty actions may very well make things worse.