



**Submission to the
Parliamentary Joint
Committee on
Intelligence and Security:
Review of the Counter-
Terrorism Legislation
Amendment
(Prohibited Hate Symbols
and Other Measures)
Bill 2023**

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The Islamic Council of Victoria (ICV) welcomes the opportunity to make a submission to the Parliamentary Joint Committee on Intelligence and Security's review into the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 which makes changes to the Commonwealth Criminal Code. As the peak representative body for Muslims in Victoria, the ICV's mission is to protect and advance the rights of its constituents throughout Victoria. It is from this perspective that we write this submission.

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INTRODUCTION

1. The Islamic Council of Victoria (ICV) is the peak Muslim body in Victoria representing over 270,000 Muslims and 76 member societies. The ICV provides advocacy and social welfare services while leading state and national initiatives through community consultations and advice to the Victorian and Federal Governments.
2. On behalf of the Muslim community, the ICV is concerned with the Proposals set out in the Explanatory Memorandum of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 ('Counter-Terrorism Legislation Amendment Bill').
3. This submission to the Parliamentary Joint Committee on Intelligence and Security ('Parliamentary Joint Committee') will explain the ICV's views with respect to the Proposals set out by Attorney General ('AG') Mark Dreyfus in the Bill's Second Reading Speech and the Explanatory Memorandum pertaining to the Bill.
4. The ICV acknowledges the comments by the AG Mark Dreyfus in the Bill's Second Reading Speech in which he condemns Islamophobia and expresses solidarity with the Australian Muslim community.
5. We accept that the government is not motivated by ill will towards Islam or Muslims. However, the ICV firmly believes that the Bill as it stands would contribute to anti-Muslim sentiment and further marginalise Australian Muslims.
6. The ICV, like most of the Muslim community, is surprised by the inclusion of the banning of the ISIS symbol as the public discussion to date has been centred around the banning of the Nazi symbol. There has been a distinct lack of proper consultation with the Muslim community. Proper consultation could have avoided the unintended damaging impacts of this proposed Bill.
7. It is the ICV's view that the proposed amendments to the Criminal Code will actually undermine the government's stated intentions of wanting to stand with the Muslim community. These changes will fuel distrust and unintended antagonism towards Islam and Muslims and undermine the safety of the Muslim community.
8. On this basis, the ICV's submission will be addressing the proposed Amendments to the Criminal Code Act 1995 ('Criminal Code'):



- a. Creating offences for publicly displaying Islamic State symbols; and trading in goods that bear Islamic State symbols (Schedule 1);
- b. Establishing new criminal offences for using a carriage service for violent extremist material; and possessing or controlling violent extremist material obtained or accessed using a carriage service (Schedule 2);
- c. Expanding the offence of advocating terrorism in section 80.2C of the Criminal Code to include instructing on the doing of a terrorist act and praising the doing of a terrorist act in specified circumstances; and
- d. Removing the sunset requirement for terrorist organisation listings, so that listings would operate until a decision is made to proactively delist an organisation (Schedule 4).

SCHEDULE 1:

Offence for Publicly Displaying Islamic State Symbols and Trading in Goods that Bear Islamic State Symbols

9. The ICV recognises the very real threat posed by right wing extremist (RWE) and neo-Nazi groups and supports efforts to limit their ability to promote their hateful narrative and to recruit supporters.
10. Whilst the threat posed by these RWE groups is rising and represents arguably the most significant risk of extremist violence in Australia, the threat posed by ISIS has noticeably diminished. The ICV believes that existing laws can adequately address the remaining threat.
11. Moreover, the ICV believes that the proposed Amendment goes beyond the scope of protection against ISIS and undermines the physical and psychological wellbeing of the Muslim community. As noted by the Islamophobia Register Australia's (IRA) submission to this enquiry, 'this will draw a false link between Islam and terrorism which can lead to Islamophobia'.¹
12. Section 80.2E *Meaning of prohibited symbols* (Item 5 - After Subdivision C of Division 8- of the Criminal Code) defines the Islamic State flag as a rectangular, black emblem with black

¹ Islamophobia Register Australia Submission, Submission to Parliamentary Joint Committee on Intelligence and Security, *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 Submissions on behalf of the Islamophobia Register Australia* (17 July 2023) 6.1.



Arabic writing translating to 'God, messenger, Muhammad' and white writing of the Islamic creed declaring 'There is no God but Allah, and Muhammad is his messenger' - known as the shahada or testimony of faith. The shahada is found in books, in artwork, in mosques, in schools, and in homes. When a person wishes to embrace Islam, they are required to recite the shahada with full conviction and understanding.

13. The ICV is concerned that the Bill is in effect banning a symbol which is not unique to the ISIS group. In fact, the symbols used by ISIS and the use of a black flag with the shahada predates ISIS by over one thousand years. This proposed law would in effect criminalise the display of the fundamental tenet of the Islamic faith, the shahada, which is recited by the world's 2 billion Muslims on a daily basis and is sacred to Muslims. And would indirectly associate core Islamic identity with criminality and terrorism.
14. Other than the black foreground, the ISIS flag has no distinguishing elements unique to it. This juxtaposes the requirements of an insignia in the Second Reading Speech - defined as a sign or mark distinguishing a group. As such, the ban does not address an insignia directly unique to ISIS, but instead discriminates on the Islamic creed by criminalising the core tenet of the Islamic faith. It would be akin to one of these RWE groups adopting the Christian Cross as their symbol, and the Christian Cross subsequently being banned despite it being used in most Christian contexts. Indeed, ISIS is a criminal terrorist group not bound by concern for how their indiscriminate violence will be associated with Islam.
15. The ICV notes that the proposed law expressly excludes conduct that is done for religious, academic, educational, artistic, literary, scientific, or journalistic purposes and places the onus on the prosecution to prove that the purported conduct falls outside stipulated exceptions. However, these two provisions do not address our overriding concern.
16. Moreover, the banning of the ISIS flag, as provided for in the Bill, is impractical. Paragraph 80.2E(d) establishes that any 'thing' which is likely to be confused with or mistaken for the ISIS flag is prohibited. Given the issues raised in Clause 14, this Section of the Bill creates too low a standard for prohibition. It is likely that many 'things' will closely resemble the ISIS flag - which again, has no distinguishing elements - where the maker of the thing is either completely oblivious to the similarity, or has no express intention to imitate ISIS. There are many 'things', such as calligraphic art, which members of the Australian community, the vast majority of whom do not read Arabic, would mistake as the ISIS flag.



17. The ICV further believes that s. 116 of the Australian Constitution protecting religious freedom in Australia would be undermined by 'prohibiting the free exercise of any religion' which in effect this law would do by limiting the right of Muslims to publicly display the shahada:

"The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth".²

18. Thus, banning the ISIS flag, whilst seemingly a logical step to protect Australia's national security, would have serious negative consequences including undermining the wellbeing of Muslims who wish to openly practice their faith.

SCHEDULE 2:

New criminal offences for using a carriage service for violent extremist material and possessing or controlling violent extremist material obtained or accessed using a carriage service.

19. The ICV notes that the violent extremist material intended to be captured by the offence includes instructional terrorist material and terrorist organisations' recruitment materials. Whilst the ICV agrees in principle with the purpose of eliminating the dissemination of materials that explicitly call for terrorist violence, this Bill goes beyond that.
20. The ICV's key issues with this proposed offence are three-fold - the absence of an element for intention, the broad potential for undue liability, and attributing extremism to organisations other than ISIS.
21. The ICV acknowledges that the bill addresses the right to the presumption of innocence per Article 14(2) of the ICCPR. However, this right will be infringed upon by the proposed legislation since intention is omitted and the assessment solely centres around the nature of

² *Commonwealth of Australia Constitution Act 1900 (Imp)* s. 116.

the material. Thus, individuals who do not have an intention of associating with or spreading violent extremism are now potentially liable.

22. New sections 474.45B and 474.45C would capture organisations outside the scope of ISIS, such as Hamas, given that it is listed as a terrorist organisation. Many people, and not just Palestinians, do not consider Hamas to be a terrorist organisation but rather a legitimate resistance group. Individuals publicly supporting Hamas and other Palestinian resistance groups for the purposes of awareness, whether expressly or impliedly (liking a video or commenting) could be taken to be possessing violent extremist material. Whereas in the majority of cases, the intention is to raise objections to the injustice against human right abuses. In such cases, individuals have a high likelihood of being found unduly liable.
23. A mere saving of videos of Palestinian resistance on one's camera roll, without intention of promoting violence, could amount to using a carriage service for violent extremist material. Hence, the Bill is unreasonably burdensome and broad.

SCHEDULE 3:

Expanding the offence of advocating terrorism in section 80.2C of the Criminal Code.

24. Section 80.2C expands advocating terrorism to include 'instructing on the doing of a terrorist act and praising the doing of a terrorist act in specified circumstances'.
25. Section 80.2C includes instructing on the doing of and praising of a terrorist act within the scope of advocating terrorism where there is a 'substantial risk that such praise might lead someone to engage in a terrorist act.
26. Fundamentally, the ICV concurs with AG Mark Dreyfus that 'glorifying terrorists ... can incite others to imitate or seek to engage in similar behaviour'.³
27. However, under the new Bill, Muslims publicly supporting actions taken by Palestinian resistance groups or Kashmiri resistance groups for example, could be viewed as advocating terrorism. The implication of this is that praising groups that are standing against egregious human rights abuses would be equivalent to having the intention of praising terrorist activity.

³ Commonwealth, *Parliamentary Debates*, Legislative Council, 14 June 2023, (AG Mark Dreyfus) <<https://ministers.ag.gov.au/media-centre/speeches/second-reading-counter-terrorism-legislation-amendment-prohibited-hate-symbols-and-other-measures-bill-2023-14-06-2023>>.

28. Moreover, the scope of potential liability is undefined, where a mere Instagram comment, or cumulation of likes on social media could be tantamount to advocating terrorism on social media.
29. The issue the ICV has is that in contrast to instructing terrorism, which is very clear and requires a clear intention to participate in terrorist planning, praising is undefined, and intention is ambiguous. Making them equivalent could lead to innocent individuals being jailed.

SCHEDULE 4:

Removing the Sunset Requirement for Instruments which List Terrorist Organisations

30. Pursuant to Schedule 4, organisations would continue to be a listed terrorist organisation until a decision is made by the Home Affairs Minister to delist an organisation.
31. Per the Second Reading Speech, the ICV notes that the Parliamentary Joint Committee will have its own-motion power to commence a review as to whether an organisation continues to satisfy the threshold to be listed as a terrorist organisation'.⁴
32. However, the ICV is concerned that despite the inclusion of those two mechanisms, the removal of the 3-year sunset clause where the government must justify the renewal of the terrorist designation, the onus will in effect fall upon the community to justify why an organisation should be delisted.
33. Further, the ICV would like to see a strengthening of the existing sunset arrangements. The ICV does not believe that there is proper scrutiny exercised when the Government seeks to maintain an organisation on the list beyond the sunset period.
34. The ICV proposes that every 3 years, the Australian Government is required to provide detailed justification as to why a particular organisation should be kept on the terrorist list including the process that it has undertaken to come to that decision and the parties that it has consulted.

⁴ Ibid.



CONCLUSION

35. It is inconceivable that the **Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023** would not lead to increased Islamophobia and would undermine the wellbeing and safety of Muslims in Australia. It will directly impinge on the right of Muslims to freely practise their faith. These consequences may not have been contemplated by the proponents of the Bill, but the reality is that this Bill would belie the AG's laudable sentiments in his second reading speech.