THE MUSLIM VOTE

Submission to

The Parliamentary Joint Committee on Intelligence and Security

The Muslim Vote (TMV) response to the (Exposure Draft Bill) Combatting Antisemitism, Hate and Extremism Bill 2026

Submission endorsed by:

1. Al-Qadr Institute
2. Education for Palestine
3. Islamic Society of South Australia
4. Islamic Practice and Dawah Circle
5. Hope In Every Smile Inc
6. Sydney Youth Connect
7. South West Muslim Association
8. Young Muslim Brothers NSW
9. Teachers and School Staff for Palestine NSW

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Executive summary

Why the Bill Does Not Tackle Antisemitism, Hate, or Extremism

The Combatting Antisemitism, Hate and Extremism Bill 2026 is presented as a response to rising antisemitism and hate. In substance, however, it is not designed to reduce antisemitic harm, violent hate, or extremist activity. Its architecture prioritises discretionary state power, speech control, and pre-criminal intervention over evidence-based prevention, targeted enforcement, and judicial accountability. As a result, it is structurally misaligned with the harms it claims to address.

First, the Bill substitutes **definitional and listing power** for problem-solving. Rather than identifying empirically demonstrated drivers of antisemitism and tailoring interventions accordingly, **it empowers the executive to define hate, designate organisations, and prescribe consequences** through broad and retrospective assessments. A regime that centres on who the state can label, rather than on how antisemitic harm occurs, manages narrative risk rather than reducing real-world incidents.

Second, the Bill **lowers legal thresholds from proof to suspicion**. Across its mechanisms, particularly in organisational designation and migration consequences, standards shift from demonstrable wrongdoing to language such as ***"might" have an effect or pose a risk***. This does not strengthen hate prevention. It expands discretionary action under uncertainty, increasing false positives, enforcement error, and contestability. Policies built on suspicion rather than evidence are not calibrated to reduce harm; they are calibrated to expand control.

Third, the Bill **relocates decision-making from courts to the executive and intelligence domain**. Listing powers and downstream consequences operate without prior judicial findings or criminal convictions. Antisemitism is a social harm that requires careful assessment of intent, context, and impact. By replacing judicial determination with executive satisfaction, the Bill creates legitimacy deficits that undermine public trust and cooperation, both of which are essential to effective hate prevention.

Fourth, the Bill **collapses hate prevention into a security-style pre-criminal framework**. By fusing antisemitism, hate speech, and extremism into a single regulatory architecture, it imports counter-extremism logic into what should be a distinct anti-racism response. This misdiagnoses antisemitism as primarily a securitisation problem rather than a form of racism with specific social, political, and historical drivers. The result is an overbroad regime that

treats expression and association as risk indicators instead of focusing on perpetrators and networks responsible for antisemitic harm.

Fifth, the Bill **detaches liability from harm**. Key offence structures expressly state that it is immaterial whether hatred, intimidation, fear, or violence actually occurred. ***A framework that does not require harm cannot credibly claim to reduce harm***. It criminalises expression based on interpretation rather than consequence, shifting the law's function from protection against injury to management of discomfort and dissent.

Sixth, the Bill **uses migration powers as punitive tools without conviction**. By allowing visa refusal, cancellation, and exclusion to be triggered by speech-adjacent conduct, public statements, or broad notions of association, it creates punishment through precarity. This produces unequal consequences for non-citizens, undermines trust, and discourages cooperation with authorities. None of these outcomes reduce antisemitism; they erode the social conditions required to address it.

Seventh, the Bill's **overbreadth guarantees selective enforcement**. Definitions are so wide that they cannot be applied evenly. In politicised contexts, selective enforcement tracks power, visibility, and controversy rather than harm. A regime that cannot be enforced consistently cannot reduce hate consistently.

This submission challenges the Government's **misdiagnosis of antisemitism**. Peer-reviewed research shows that antisemitism intensifies in conditions of mass violence, genocide denial, moral collapse, and political hypocrisy, not as a consequence of contested political expression or association. Suppressing speech through designation and prohibition therefore addresses the symptom rather than the cause and risks exacerbating, rather than reducing, social harm.

The proposal relies on an undefined and unmeasurable concept of "social harmony". No definition, baseline, or metric has been provided by the Australian government to explain how social cohesion is harmed by the forms of political expression or advocacy captured under the Bill, or how executive designation and prohibition will restore it. Rather than articulating a causal pathway, the Bill embeds a regulatory logic in which cohesion is treated as the by-product of exclusion and restriction. Organisations are removed from public life and forms of expression are constrained on the premise that their absence will stabilise social relations. This logic is neither tested nor capable of evaluation. In the absence of clear criteria or measurable outcomes, social harmony functions as a justificatory concept rather than an

assessable objective, enabling discretionary intervention while obscuring whether the law can achieve its stated purpose.

Finally, the Bill is **structurally vulnerable to use against political dissent**. Because triggers are speech-based and association-based, the framework can be repurposed to suppress political expression (such as "globalise the intifada"), including solidarity movements and protest. A hate-prevention law that doubles as a dissent-management tool undermines its own credibility and dilutes enforcement focus away from genuine antisemitic threats.

This submission situates the proposal within a broader context of **political partisanship and international legal obligation**. Australia is a party to the Genocide Convention and the Arms Trade Treaty and is bound by preventative duties following the International Court of Justice's finding that genocide is plausible in Gaza. Collapsing advocacy, expression, and association into risk indicators allows criminal and administrative consequences even where no violence has occurred, no offence has been committed, and no conviction exists, lowering the threshold for Government intervention.

Further, this submission strongly rejects the notion that the proposed Bill will strengthen public safety, social cohesion, or the rule of law. It weakens them. This submission urges the Government to rethink the proposal and reaffirm principles of evidence-based lawmaking, equality before the law, and protection of democratic space.

In sum, the Bill fails as an antisemitism and hate response because it prioritises discretionary authority over evidence, executive designation over judicial process, and speech control over targeted harm reduction. It expands state power while weakening the very mechanisms: legitimacy, precision, proportionality, and trust, on which effective hate prevention depends.

A genuine commitment to criminalising hate speech and protecting communities would apply the law consistently across religious minorities. Yet the proposed vilification framework conspicuously excludes religion as a protected ground. In an environment where Islamophobic incidents have risen by 740 per cent, this omission is neither incidental nor neutral. It draws a clear line between communities deemed worthy of protection and communities treated primarily as objects of regulation. The Bill, therefore, does not simply fail to address Islamophobia; it actively reinforces a hierarchy of concern in which antisemitism is criminalised while anti-Muslim hate is left outside the scope of protection. This asymmetry sends an unmistakable message. The Government is prepared to police Muslim speech, associations, and institutions, but not to extend to Australian Muslims the

same legal safeguards against hate that it claims are essential for social cohesion. That is not principled hate prevention. It is selective enforcement masquerading as protection.

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Religious Teaching

The following section addresses the proposed religious teaching provision in Schedule 1, Part 5 of the Exposure Draft.

This part of the Bill goes to the heart of religious freedom, not at its edges. It changes how religious teaching is treated under criminal law. On its face, the provision appears to protect religious instruction. In practice, it does the opposite. It makes religious speech legally risky first, and only later allows religious leaders to try to defend themselves.

In practical terms, this means a religious leader can be investigated or charged for what they teach even if no harm was caused, no hatred resulted, and no one felt threatened. Protection for religion applies only if the speaker can later prove that their words fall within a very narrow defence. This reverses the usual expectation that the state must justify interference with religious practice.

Criminalisation of Religious Teaching Through a Burden-Shifting "Defence"

Relevant provision

Exposure Draft – Schedule 1, Part 5 (Racial vilification offence)

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Subsection (4):

"Subsection (1) does not apply to conduct that consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion."
Note: "A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3)."

What this provision does in law

At first glance, subsection (4) appears to protect religious teaching. ***In reality, it does the opposite***. It establishes criminal liability first and offers religious protection only as a conditional defence, with the burden placed on the religious speaker to justify themselves after the fact.

This structure matters. Under subsection (1), a person may be exposed to criminal liability for speech. Under subsection (3), it is explicitly stated that it is "immaterial" whether the conduct actually resulted in hatred, intimidation, fear, or violence. Taken together, this means a religious speaker may be exposed to criminal liability even where no harm occurred, no

person was affected, and intent is inferred from the characterisation of the speech rather than demonstrated through effect.

Subsection (4) does not operate as a safeguard against that outcome. It operates as a narrow escape clause that must be proven by the accused. The legal effect is clear: religious speech is criminalised by default and only later excused if it fits within a tightly confined and uncertain exemption.

Why is this especially serious for Muslim communities?

For Muslim communities, this provision is not theoretical. It strikes at the heart of ordinary religious life. Islamic teaching does not consist of "only" directly quoting scripture. Sermons, classes, study circles, and youth programs necessarily involve interpretation, explanation, contextualisation, reasoning, and application to contemporary realities. An imam does not simply recite verses. They explain meaning, address injustice, speak about oppression, and connect faith to lived experience.

The word "only" in subsection (4) is decisive. The moment a religious leader explains a verse rather than reciting it, the protection becomes uncertain. The moment they apply a teaching to current events, the protection may fall away entirely. What is left is legal risk.

This captures the ordinary and necessary practice of Islam. It does not target fringe behaviour. It targets the mainstream.

Reversal of the presumption of innocence

The note to subsection (4) compounds the problem. It states explicitly that ***the defendant bears the evidential burden***. This reverses a foundational principle of criminal law. Instead of the state being required to prove wrongdoing, a religious leader must prove that their teaching qualifies for protection.

In practical terms, this means an imam, teacher, or community speaker can be investigated, charged, or prosecuted, and only then attempt to defend the religious legitimacy of their words in court. The legal cost, reputational damage, and stress occur regardless of the outcome. ***This is not a neutral allocation of risk. It places the burden squarely on religious minorities whose speech is already subject to heightened scrutiny***.

Community impact and effect

This provision will not primarily be tested in court, but instead operate through fear. The foreseeable and intended effect of this Bill is that mosques restrict the range of topics

addressed in sermons and classes, governing boards exercise heightened control over speakers and subject matter, educators avoid interpretive or contextual teaching in favour of safe and literal content, and youth leaders limit discussion of injustice, Palestine, genocide, or political responsibility to reduce exposure to investigation. This is how speech is suppressed without formal bans. The law does not need to be enforced aggressively, given that the Bill's structure has done the work. The impact is magnified by existing surveillance of Muslim religious life. Sermons have already been monitored. Community organisations already operate under suspicion. This clause formalises that reality and gives it criminal force. The result is not the prevention of hate through targeted enforcement, but the systematic re-engineering of religious teaching under the shadow of criminal liability.

Why this is not neutral regulation

This is not ordinary hate-speech regulation, but instead, doctrinal regulation by proxy. Authorities are invited to scrutinise religious teaching line by line, assessing theology through a criminal lens. ***The law does not require proof of harm***. ***It asks whether the speech can be justified after the fact***. That is not how religious freedom operates in a democratic society. Genuine religious freedom protects interpretation, explanation, and moral application; ***it does not confine faith to literal quotation***. ***A framework that tolerates religion only when it is narrow, literal, and politically harmless is not protecting religion***.

This provision alone is sufficient to render the Bill incompatible with genuine religious freedom. It transforms religious teaching from a protected right into a conditional activity, tolerated only when it avoids interpretation, relevance, and controversy. For Muslim communities, the message is unmistakable: speak cautiously, limit your theology, and avoid applying faith to injustice, or risk criminal consequence. This is effectively permission under threat, not protection.

Executive Listing Powers Without Objective Safeguards

Relevant provisions

Exposure Draft – Schedule 1: Part 4 (Prohibited hate groups regime)

(Provisions establishing ministerial power to list organisations, consequences of listing, and review mechanisms)

What this framework does in law

The Exposure Draft Bill establishes a regime under which organisations may be designated as "prohibited hate groups" through an executive listing process. This listing power sits at the heart of the Bill. It is the mechanism from which many downstream consequences flow, including criminal liability for association, migration consequences, funding withdrawal, reputational damage, and surveillance.

The defining feature of this regime is that listing does not require a criminal conviction, a judicial finding, or proof that an organisation has committed a criminal offence. Instead, listing decisions are based on executive satisfaction, informed primarily by intelligence advice and **retrospective assessment** of past conduct or statements.

There is no requirement that the conduct relied upon be recent. There is no requirement that it be unlawful at the time it occurred. There is no requirement that it be repeated. The assessment is broad, discretionary, and **backward-looking.**

Although review mechanisms exist on paper, they operate **after the listing has already taken effect**. The legal and social consequences of listing occur immediately. Review does not prevent harm. It only offers the possibility of partial redress once damage has already been done. This is not a peripheral feature of the Bill. It is the architecture on which the rest of the regime depends.

Absence of objective thresholds and procedural fairness

A central problem with the listing framework is the absence of clear, objective thresholds. The Bill does not set out defined evidentiary standards that must be met before an organisation can be listed, nor does it require that the organisation be given notice, reasons, or an opportunity to respond **before** listing occurs.

This departs from fundamental principles of procedural fairness. In fact, the framework includes an explicit, undemocratic affront to civil society; the Director-General and the Australian Federal Police (AFP) Minister are expressly not required to observe procedural

fairness under the proposed laws. Decisions with severe consequences are made first and explained later, if at all. Organisations are not afforded a meaningful opportunity to contest allegations before being sanctioned. In effect, the law assumes risk rather than proving wrongdoing. Listing becomes an administrative act of prevention rather than a legal response to established harm.

Disproportionate impact on Muslim organisations and similarly situated civil society groups

Although the listing regime is framed in neutral terms, its operation will fall most heavily on Muslim organisations. Muslim civil society in Australia is highly visible, politically active, and internationally connected. Mosques, charities, advocacy groups, youth organisations, and humanitarian networks routinely engage with global issues, including Palestine, Gaza, and international justice. They host speakers, issue statements, organise events, and participate in transnational solidarity. ***Under this framework, those ordinary and lawful activities can later be reinterpreted through a security lens***. For example, a past speaker, a historical statement, a social media post, or an association formed in good faith can become the basis for listing. Given that the listing relies heavily on intelligence advice, the process is opaque. ***Organisations may never know precisely which conduct triggered the decision***. This opacity compounds fear and undermines trust. For Muslim organisations already accustomed to surveillance and scrutiny, the risk is not hypothetical. The regime formalises an existing imbalance and converts suspicion into law.

Impact on members, communities, and association

Once an organisation is listed, the consequences extend beyond the organisation itself. Members, volunteers, donors, and associates are exposed to legal risk simply by virtue of their connection. The association becomes dangerous, and engagement becomes questionable. Entire communities are affected by a decision taken without their participation or consent. ***This produces collective punishment in practice***, even if not in name. It fractures community infrastructure and discourages civic participation. People disengage not because they support wrongdoing, but because proximity itself becomes hazardous.

Broader implications beyond Muslim communities

While Muslim organisations are the most immediate targets, the implications extend further. Any politically active organisation that challenges government policy, supports international causes, or engages in contentious advocacy becomes vulnerable to scrutiny.

Environmental groups, refugee advocates, Indigenous organisations, and anti-war movements all rely on strong language, solidarity networks, and public mobilisation. Once executive listing is normalised without objective safeguards, the boundary of application expands. History shows that regimes built on discretionary listing do not remain narrow. They extend across issues and movements as political priorities shift.

A fundamental defect

This listing framework replaces judgment with designation, substituting evidence with assessment and due process with discretion. It allows the executive to impose severe consequences without meeting the standards normally required when rights are restricted. This does not strengthen public safety. It undermines democratic resilience by eroding trust, participation, and accountability. A law that permits organisations to be effectively outlawed without conviction, without a hearing, and without clear standards cannot claim to be genuine. It does not regulate harm but instead manages power.

Online and Protest-Facing Criminalisation Risk

Relevant provision

Exposure Draft – Schedule 1, Part 5

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(operating through proposed s 80.2BF, including subsections (3) and (7), analysed above)

How this offence operates in protest and online settings

This offence is designed to operate in areas where people gather, speak, and make themselves visible. It reaches into the spaces where communities come together to express grief, anger, solidarity, and moral objection. In practice, that means protests, rallies, vigils, and online spaces where people document and share those moments.

Once public communication is captured as regulated conduct, protest becomes a legally assessable activity rather than a presumably protected democratic act. Chanting, holding placards, displaying symbols, wearing clothing with messages, sharing protest footage online, or repeating slogans at rallies all fall within the framework of the offence. This means protest is no longer evaluated primarily by its conduct or impact, ***but by how its language and symbolism are interpreted after the fact.*** The legal risk attaches not to violence or intimidation, but to visibility.

Impact on protest organisation and participation

The effect on protest is structural. Organisers must now anticipate how language, symbols, and slogans may later be characterised, altering how protests are planned, who is invited to speak, and what messages are deemed safe to display. One practical consequence is that the legal status becomes unpredictable. The risk is not evenly distributed. Protests concerning Palestine, Gaza, genocide, resistance, and international accountability are most exposed because they rely on moral language, solidarity, and critique of state power. These protests are already politically sensitive. The offence framework amplifies that sensitivity into legal risk.

Why Palestine-focused protests are first affected

Muslim communities and Palestine solidarity movements rely heavily on protest as a form of civic participation. For many, protest is not a marginal activity. It is one of the few accessible ways to respond to mass civilian harm occurring overseas. Because Muslim political expression is already securitised, protest language is more likely to be scrutinised, recorded, and interpreted through a risk lens. Once scrutiny attaches, legal exposure follows. This does not require hostility from authorities. It follows from structural bias and risk aversion. Police, councils, and institutions respond cautiously where the legal boundaries are unclear.

Online amplification as a liability multiplier

The offence is especially potent in the digital environment. Protests today are not confined to physical space. They are documented, shared, livestreamed, and reposted. Online amplification multiplies exposure. A chant repeated once can be replayed endlessly. A placard captured in a photo becomes permanent. A livestream clip circulates far beyond the original audience. Under this framework, amplification does not increase harm, but it increases risk. This has a chilling effect on who attends protests at all. Migrants, students, casual workers, and people with precarious status are the first to withdraw. The protest may still occur, but its composition changes. Those with the least to lose remain. Those with the most to lose disappear, reshaping protest demographically and politically.

Broader democratic implications

While Muslim communities are the first to feel this effect, the logic does not stop there. Once protest language is treated as regulated conduct, any movement that relies on visible dissent becomes vulnerable.

Environmental protests, anti-war demonstrations, Indigenous resistance actions, and labour mobilisations all use symbols, chants, and moral language. The precedent established here is transferable. What changes is not only what can be said, but who is willing to say it.

Why this is a distinct and serious problem

This issue is not simply about speech restriction. It is about **how protest functions in a democracy**. When protest is treated as a legally risky activity rather than a protected form of participation, accountability weakens, and power is challenged less often, narrowing public debate. The offence does not need to be enforced aggressively to achieve this outcome. Its design is sufficient. By attaching legal uncertainty to protest language and online visibility, it alters behaviour at scale. That is why this section cannot be dismissed as a downstream effect of other clauses. It is a core operational feature of the offence as it applies to modern activism.

For communities confronting mass violence, occupation, and credible annihilation, expression is not an abstract right. It is often the primary means through which people can name harm, assert dignity, and demand accountability. When institutions fail, borders close, and legal remedies are inaccessible, language and protest become one of the few remaining tools through which injustice can be confronted publicly. The federal Bill directly engages this space. Through executive designation, restriction of expression, and regulation of association, it intervenes in the forms of speech and solidarity through which accountability is pursued. Effectively, the Bill means that expression is no longer a mechanism of scrutiny, reshaping the conditions under which power can be challenged.

Elimination of the Harm Requirement and Detachment from Criminal Law Principles

Relevant provision

Exposure Draft – Schedule 1, Part 5

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***Subsection (3)*:**

“For the purposes of subsection (1), it is immaterial whether:

(a) the target, or members of the target group, actually are distinguished by the particular race, colour or national or ethnic origin; or

(b) the conduct actually results in hatred of another person or group of persons; or

(c) the conduct actually results in any person feeling intimidated, fearing harassment or violence, or fearing for their safety."

What this provision does in law

Subsection (3) removes actual harm from the offence entirely. It states, in unambiguous terms, that criminal liability does not depend on whether hatred, fear, intimidation, or violence occurred. ***This represents a structural break from core criminal law principles***. ***In criminal law, harm performs a critical function***. It limits state power and ensures that punishment is proportionate and connected to injury, risk, or consequence. Speech-based offences have traditionally been constrained by at least one of the following elements: intent to cause harm, a likelihood of harm, actual harm, or a clear and direct risk. These elements anchor liability to real-world impact. This provision removes all of those anchors. ***Criminal liability is no longer tied to what speech does, but to how it is characterised***. ***Perception replaces consequence, and interpretation replaces evidence***.

Why this departure is undemocratic

By declaring harm "immaterial", the law shifts its purpose. It ceases to be a mechanism for preventing injury and becomes a tool for handling discomfort. Speech is criminalised not because it causes harm, but because it unsettles, offends, or challenges prevailing narratives.

This change has profound implications. Once harm is removed as a limiting principle, the scope of enforcement expands dramatically. ***Any speech that is controversial, confrontational, or politically inconvenient can be framed as criminal regardless of its actual effect***. The law no longer asks whether society was harmed. ***It asks whether authorities disapprove of the speech***.

Why Muslim communities are especially exposed

This provision is especially dangerous for Muslim communities because Islamic discourse is already politicised and securitised in public life. Sermons, lectures, and community discussions that address injustice, oppression, resistance, genocide or international violence are routinely scrutinised through a security lens.

Under subsection (3), a speech or sermon discussing Gaza, occupation, or resistance could be criminal even if no one actually felt threatened, no hatred arose, and no violence followed. The absence of harm does not protect the speaker. ***The only question becomes whether the speech can be characterised by authorities as vilifying***. This places Muslim religious and

political expression in a uniquely precarious position. Speech that is central to Muslim ethical and theological life becomes legally vulnerable not because of its effects, but because of its subject matter.

Expansion of discretion and selective enforcement

When harm is irrelevant, discretion becomes the decisive factor. ***Enforcement decisions are no longer guided by actual impact but by political sensitivity, public pressure, and prevailing narratives***. This invites selective enforcement.

In practice, this means that speech critical of occupation, genocide, or critical of allied states is more likely to attract scrutiny than speech aligned with dominant political positions. Muslim speech and voices of those standing against oppression, already treated as suspect, will be the first and most frequent target. This follows directly from the structure of the law and from historical patterns of enforcement in counter-terrorism and public order contexts.

Erosion of judicial restraint

Subsection (3) also constrains the judiciary. ***By instructing courts that harm is immaterial, the law removes an essential tool judges use to assess proportionality and restraint***. Courts are prevented from asking the most basic question in criminal adjudication: what damage was done? This undermines judicial independence and reduces the role of courts to confirming administrative characterisation rather than assessing real-world impact.

Combined effect with the religious teaching provision

When combined with the narrow religious teaching "defence" in subsection (4), the danger is more acute. A religious leader may be charged even where no hatred occurred, no fear was created, and no violence followed. The absence of harm offers no protection. The burden then shifts to the accused to justify their speech.

Why this matters

This provision transforms criminal law into narrative control, allowing the state to punish speech ***not*** because it injures, but because it challenges. It replaces evidence with interpretation and substitutes legal certainty with discretionary power. ***A legal framework that removes harm as a requirement cannot credibly claim*** to protect public safety. It protects authority from dissent. That is a fundamental defect, not a drafting choice. Including a harm element requires evidence that the conduct gave rise to a real-world consequence, and acts as a safeguard against all of these concerns.

Over-Broad Definition of "Conduct in a Public Place" and the Expansion of Speech Surveillance

Relevant provision

Exposure Draft – Schedule 1, Part 5

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***Subsection (7)*:**

"***engages in conduct in a public place"*** includes when a person "communicates to the public using any form of communication (including speaking, writing, displaying notices, graffiti, playing of recorded material, broadcasting and **communicating** through social media and other electronic methods)".

What this provision does in law

Subsection (7) defines "conduct in a public place" so broadly that it captures almost all modern forms of public communication. Speaking, writing, displaying signs, recording audio or video, livestreaming, posting online, or broadcasting content are all expressly included. There is no limiting principle based on setting, intent, or context.

If all public-facing speech is treated as occurring in a "regulated space", then *protest itself becomes a regulated activity by default****, not a protected democratic right. In effect, the law treats nearly all public-facing speech as occurring in a regulated space***. There is no meaningful distinction between a large public rally, a livestreamed sermon, a recorded lecture uploaded for community education, or a statement shared online. All are treated as equivalent for the purposes of criminal liability.

This breadth reflects an intention to ensure that speech cannot avoid scrutiny by moving across platforms or formats. The consequence, however, is that the law collapses the distinction between public order regulation and general expression, vastly expanding the reach of criminal law into ordinary civic and religious life.

Why Muslim communities are uniquely affected

For Muslim communities, the implications of this provision are immediate and concrete. Much of Muslim religious and political life is necessarily public and increasingly digital. Sermons are livestreamed to reach congregants who cannot attend in person, lectures are recorded and shared for education, and community organisations communicate through social media. Statements on justice, Gaza, and international events are issued publicly. While these

provisions are framed as neutral, they operate in a context where Muslim speech is already disproportionately scrutinised and politicised. As a result, Muslim communities are not merely affected by this framework; they are its primary subjects. The same mechanisms, however, do not stop there. Once public speech is treated as regulated conduct regardless of harm, the logic extends beyond Muslims to any group engaged in dissent.

Under subsection (7), all of these activities fall squarely within the definition of "conduct in a public place". They are therefore exposed to criminal scrutiny regardless of outcome.

When read together with subsection (3), which removes any requirement for harm, and subsection (4), which provides only a narrow and burden-shifted defence for religious teaching, the result is a comprehensive exposure of Muslim public life to legal risk. Speech does not need to cause actual hatred, fear, or violence to be captured. Protection does not apply unless the speaker can later prove that their conduct fits within a narrow exemption.

This combination places Muslim communities in a position of continuous vulnerability. Ordinary religious and political expression becomes subject to assessment, interpretation, and potential prosecution.

Transformation of public religious life into a regulated zone

One of the most serious consequences of this drafting is that it eliminates any meaningful distinction between public and private religious space. ***Religious teaching cannot retreat into safety by remaining "internal" or "private" once it is communicated beyond a closed room***. The moment a sermon is livestreamed, recorded, or shared, it becomes subject to the offence framework. This transforms public religious life into a regulated zone. Mosques, community centres, and online platforms are no longer spaces of protected expression but environments in which speech must be carefully managed to avoid legal exposure. Religious leaders are forced to balance their theological duty against the risk of criminal prosecution. It cannot be argued that the regulation here is neutral. Instead, it is the extension of state surveillance into religious and political expression under the guise of public order.

Normalisation of Preventive Criminal Law

This framework accelerates the shift from **reactive criminal law** to **preventive criminal law**, in which individuals are regulated not for what they have done but for what the state fears they might represent. Once harm is no longer required and speech itself becomes the trigger, criminal law ceases to function as a response mechanism and becomes an anticipatory control system.

This provision alters how criminal liability is approached in practice. Rather than being guided by clearly defined prohibitions and demonstrable harm, individuals and organisations are required to anticipate how their public expression may later be interpreted by authorities. Legal exposure, therefore, turns on assessment and characterisation rather than on conduct that is plainly unlawful. This shifts the operation of the law toward precautionary compliance, where speakers adjust their behaviour to minimise risk in the absence of clear boundaries. In other words, individuals are no longer governed by clear prohibitions, but by an obligation to constantly assess how their speech may be interpreted by authorities. This is a permanent transformation in how criminal law operates, not a temporary response to a specific threat.

Doctrinal Capture of Religious Interpretation

The Bill does not merely regulate speech; it places the state in the position of **evaluating religious interpretation**. By limiting protection to direct quotation and excluding explanation, application, or moral reasoning, the law implicitly distinguishes between "acceptable" and "unacceptable" theology.

This is a novel and dangerous intrusion. It invites prosecutors, police, and courts to assess what constitutes legitimate religious teaching. Over time, this produces doctrinal capture, where ***religious expression is shaped not by faith traditions but by what passes legal scrutiny***. That is not neutrality. It is state involvement in theology through criminal law.

Unequal Exposure to Law Enforcement Contact

The structure of the law ensures that certain communities will experience **disproportionate contact with law enforcement**, even without being found guilty of an offence. Investigations, questioning, intelligence assessments, and monitoring become routine. This has cascading effects: increased police presence at community events, greater intelligence file accumulation, reputational harm without findings and unequal burden of compliance costs.

Migration and Citizenship as Punitive Tools

Relevant provisions

Exposure Draft – Schedule 2: Migration amendments

Pages 43–50

Key amendments appear in:

- **Subsection 5(1)** (definitions, including "association") – p.43
- **Section 5C(1A)** (spreading hatred and extremism) – pp.44–45
- **Sections 500A(1A) and 501(6)(6A)** (visa refusal and cancellation grounds) – pp.46–49
- **Application provisions** extending reach to past conduct – pp.49–50

What these provisions do in law

Schedule 2 extends the hate and extremism framework directly into the Migration Act 1958. It creates new grounds on which visas may be refused or cancelled, not on the basis of criminal conviction, but on ***association, past membership, public statements, or encouraged speech***, assessed through a lower threshold of risk.

Several features are decisive.

First, the definition of ***"association"*** is expanded. A person is taken to have an association with an organisation if they ***meet or communicate*** with it, and the legislation expressly notes that the association ***may consist of a single meeting or communication*** (s 5(1), p.43). There is no requirement for continuity, intent, or ongoing involvement.

Second, the amendments replace the standard that a person ***"would"*** pose a risk with the much weaker standard that a person ***"might"*** pose a risk (for example, amendments to ss 5C, 500A, and 501 at pp.44–49). This softening of language materially lowers the threshold for adverse decisions.

Third, the amendments explicitly bring ***public statements*** within scope. A visa may be refused or cancelled where a non-citizen has made or endorsed public statements, including ***online statements made in Australia or overseas***, that involve dissemination of ideas based on superiority or hatred, where there is a risk of harm if the person were allowed to enter or remain (s 5C(1A)(d)–(e), 500A(1A)(d)–(e) and 501(6A)(d)–(e), pp.44–45, 46–49).

Critically, none of these grounds requires a criminal conviction. The legislation expressly provides that conduct may be relied upon ***whether or not any person has been convicted of an offence constituted by the conduct*** (s 5C(1A)(c), 500A(1A)(c), and 501(6A)(c), pp.45, 46, 48).

Why this creates a punitive migration regime

These amendments transform migration law into a **parallel punishment system**. Consequences that are punitive in effect, removal, exclusion, family separation, and loss of livelihood are imposed administratively, without the safeguards of criminal process. Decisions may be made based on suspicion, association, or speech, and are assessed through executive discretion. ***Review mechanisms, where available, occur only after the harm has already been inflicted, even when no court has found them guilty of anything***. Deportation, visa refusal, or exclusion cannot be meaningfully undone by later review, as it effectively constitutes punishment without adjudication.

Why Muslim communities are disproportionately affected

Muslim communities are uniquely exposed to these amendments because of how the criteria align with ordinary and lawful aspects of Muslim life.

Many Muslims in Australia are:

- migrants, refugees, students, or temporary visa holders
- engaged in transnational family, humanitarian, or political networks
- publicly vocal on Gaza, Palestine, and international justice

Under these provisions, a Muslim non-citizen may face visa refusal or cancellation for a single meeting or communication later characterised as an "association", a public solidarity statement made online, or for speech encouraged or shared in a community context. None of this requires criminality, and none requires intent to cause harm. The consequence flows from characterisation and risk assessment. ***The deterrent effect is immediate***. For non-citizens, political speech is no longer merely expressive, but instead existential. Speaking publicly may cost visa status, and silence becomes a survival strategy.

Two-tier citizenship and unequal consequences

These provisions entrench a **two-tier system**. Citizens may face investigation or prosecution, and non-citizens may face removal. The same conduct carries radically different

consequences depending on immigration status. This is the structural effect of embedding hate and extremist logic into migration decision-making.

Retrospective reach and permanent precarity

The application provisions make clear that these amendments apply to:

- visa applications lodged before but determined at commencement
- visa cancellations made after commencement
- conduct occurring **before or after** commencement (pp.49–50)

This creates permanent precarity, where past speech, past associations, and past conduct may be reassessed under new standards. There is no safe temporal boundary.

Fundamental defect

Migration law is being used as a shortcut for enforcement. Instead of proving wrongdoing in court, the state imposes severe consequences through discretionary administrative power. This enforces silence through insecurity and disciplines speech by threatening belonging. A legal framework that conditions visa status and entry on political compliance cannot be reconciled with democratic principles. It does not regulate borders. It regulates dissent through precarity, that is, **the state controls what people say by making their position insecure**.

Antisemitism intensifies under atrocity, not dissent

Combating antisemitism and hate requires the adoption of policies based on sound empirical evidence about how antisemitism actually emerges and intensifies in societies (Bleich et al. 2017; Fine 2010). The current composition of the Bill suffers from structural errors and legal flaws that render it incapable of meeting its stated goals. There is a well-documented global pattern that cannot be ignored: antisemitism rises during periods of mass violence, atrocity, and genocide (Herf 2005; Bleich et al. 2017). This is not conjecture, and it is not a matter of controversy within serious scholarship (Fine 2010). Periods marked by large-scale civilian killing, impunity, and moral dissonance generate social strain (Straus 2004). When governments respond to such strain by denying, excusing, or sanitising violence, resentment does not dissipate; it metastasises (van Dijk 1992; Gerteis, Hartmann & Edgell 2020).

This rise does not occur because resistance movements generate hatred. It occurs because governments and institutions collapse Jewish identity into the actions of Israel. When governments present Israel as the representative of Jewish people everywhere, while simultaneously defending or minimising its conduct, they fuse identity with state violence. This is not an act of solidarity; it is an act of **erasure** (that is, when governments speak and act as though Israel represents "the Jewish people", they overwrite the diversity, independence, and plurality of Jewish people with a single political identity). It places Jewish communities in the line of fire of political anger that should be directed at state power. Compounding this failure is the defence or minimisation of mass civilian killing. When governments speak about atrocity in the language of inevitability, necessity, or unfortunate collateral damage, they abandon moral clarity and signal that some lives are negotiable. That signal does not reassure the public, but instead destabilises it, telling people that the rules they are asked to live by are not the rules governing power.

At the same time, legitimate political outrage is suppressed rather than channelled. Protest is restricted, religious speech is policed, and solidarity is framed as a threat. Extensive peer-reviewed research demonstrates that this approach does not reduce social tension but instead exacerbates it (Hirschman 1970; della Porta 2013). Anger that cannot be expressed openly does not disappear. When institutional avenues for dissent are closed, grievance is displaced into informal and often more destructive channels, increasing the risk of radicalisation and social harm (Klandermans 1997; Tilly & Tarrow 2015). The suppression of lawful political expression, therefore, undermines public safety rather than protecting it, as unexpressed outrage seeks alternative outlets that are less visible, less accountable, and more dangerous

(Gurr 1970; della Porta 2013). These dynamics together produce a combustible environment. Hatred does not emerge from protest. It emerges from moral collapse and political hypocrisy. It emerges when people are told to remain calm while witnessing mass death, to moderate their language while institutions refuse accountability, and to accept restraint while power exercises none.

To attribute rising antisemitism to resistance is, therefore, not only inaccurate but irresponsible. It misdiagnoses the problem, ensuring that the proposed solution will fail. It merely provides the appearance of action while leaving the underlying drivers untouched. There is a further danger in this framing. By focusing on these dynamics as the alleged cause of antisemitism, the Government absolves itself of responsibility for the environment it has helped create. It deflects attention from its own choices, including diplomatic alignment, selective condemnation, and the refusal to name or confront mass civilian harm. Antisemitism is then positioned as something caused by activists rather than something exacerbated by political decisions.

This approach also harms Jewish communities. When governments conflate Jewish identity with the actions of a state accused of grave international crimes, they expose Jewish people to backlash while claiming to protect them. This does not safeguard Jewish communities. It uses their safety to shield political power rather than to confront violence consistently. This phenomenon is evident in how definitions and policies, such as the IHRA Working Definition of Antisemitism, have been applied in Australia and elsewhere. Legal scholars and community organisations have documented how these definitions distort Jewish identity with support for a foreign state, leading to censorship of legitimate critique while claiming to protect Jewish people. This reframing focuses on preserving political alignments rather than addressing genuine harm, exposing those with minority identities to backlash for state actions they do not control.

A credible response to antisemitism requires confronting genocide, not silencing those who oppose it. It requires separating Jewish identity from state violence, not binding them together. It requires allowing political expression to function as a pressure valve, not sealing it off and watching resentment build. Failing to acknowledge this relationship produces the wrong solution. It creates a situation in which antisemitism is publicly condemned while the conditions that fuel it are actively sustained.

Treating advocacy as dangerous, expanding punitive power without evidence, banning groups through ministerial discretion and removing actual “harm” from the equation

The Government cannot regulate its way out of a crisis it refuses to name. Antisemitism will not be reduced by criminalising advocacy against mass destruction in Gaza, while genocide is denied, excused, or treated as an inconvenience. The only path that leads away from hatred is the restoration of moral coherence. That requires honesty about violence, consistency in the application of principles, and the courage to confront power. Anything less is not a strategy to combat antisemitism, but rather, a strategy to manage appearances while allowing harm to continue.

International findings of genocide

Multiple international bodies have concluded that Israel’s conduct in Gaza constitutes genocide (Albanese, 2024; United Nations Office of the High Commissioner for Human Rights [OHCHR], 2024). This is not a matter of political opinion, activist rhetoric, or partisan alignment. It is the outcome of formal legal processes carried out by institutions created precisely to assess allegations of mass atrocity when states refuse to do so themselves (Albanese, 2024). The International Court of Justice has determined that claims of genocide are plausible and has ordered provisional measures to prevent further harm (International Court of Justice, 2024). This finding was not symbolic. It was issued after examining evidence, legal submissions, and the applicable framework under the Genocide Convention (International Court of Justice, 2024). The Court did not need to reach a final determination to act. Plausibility alone was sufficient to trigger urgent legal obligations, consistent with established international legal doctrine on genocide prevention (Albanese, 2024).

That threshold matters. The Genocide Convention exists to prevent irreparable harm, not to offer post hoc commentary after annihilation has already occurred. Its purpose is preventative by design, imposing obligations on states at the moment a serious risk of genocide becomes apparent, rather than waiting for final proof after mass destruction has taken place (Schabas, 2009). When the world’s highest judicial body determines that genocide is plausible, the appropriate response is not delay or deflection, but heightened scrutiny and accountability.

In its Order on provisional measures of 26 January 2024, the **International Court of Justice** held that at least some of the rights claimed by South Africa under the Genocide Convention were plausible and that there was an urgent risk of irreparable prejudice to those rights (International Court of Justice, 2024). The Court reached this conclusion after examining

extensive factual material, legal submissions, and the applicable framework of the Genocide Convention. It did not purport to make a final determination on responsibility, nor was it required to do so. Under established international law, plausibility alone is sufficient to trigger immediate legal obligations aimed at preventing further harm (Schabas, 2009).

Australia is a **party to the Convention on the Prevention and Punishment of the Crime of Genocide** and is therefore bound by its preventative obligations. Those obligations are not passive, and they are not discretionary. Once a serious risk of genocide is established as plausible by the International Court of Justice, states parties have a duty to act within their capacity to prevent further harm. This includes ensuring that their own conduct does not contribute, directly or indirectly, to the commission of prohibited acts. Australia is also a **state party to the Arms Trade Treaty (ATT)**, which imposes clear obligations to assess and prohibit arms transfers where there is an overriding risk that the weapons would be used to commit or facilitate genocide, crimes against humanity, or war crimes. The International Court of Justice's finding of plausibility, coupled with repeated warnings from United Nations bodies, necessarily elevates Australia's legal responsibilities under both instruments. In this context, characterising Gaza as merely an "international issue" beyond domestic concern is legally untenable. International law expressly requires states parties to internalise these obligations in their domestic decision-making, including in matters of foreign policy, arms exports, and political conduct. To ignore these duties while restricting domestic speech in response to public outrage is a failure to discharge binding international obligations at the very moment they are most clearly engaged.

Alongside the Court, the **United Nations**, through its Special Rapporteurs and independent investigative mechanisms, has repeatedly warned that acts committed in Gaza may amount to genocide, crimes against humanity, and war crimes. In March 2024, the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, **Francesca Albanese**, concluded that there were reasonable grounds to believe that acts of genocide were being committed, describing the situation as one that met the legal and factual indicators set out in the Genocide Convention (Albanese, 2024). Similar warnings have been issued by other UN mandate holders and expert bodies operating under the auspices of the Office of the High Commissioner for Human Rights, all applying established international legal definitions and evidentiary standards (OHCHR, 2024).

These warnings are not rhetorical interventions. They are the product of formal mandates, legal expertise, and investigative methodologies developed specifically to assess the gravest

violations of international law. Such findings are issued cautiously and only where thresholds grounded in treaty law (for example, the Geneva Conventions, the Arms Trade Treaty) and customary international law are met. Taken together, they reflect a growing and credible consensus among independent legal experts that genocide and other mass atrocity crimes in Gaza are real and ongoing. To disregard these determinations, or to treat them as merely political opinions, is to misunderstand both the function of international law and the preventative obligations that arise once plausibility has been established.

In this context, suppressing protest and political language is not a neutral act. It is a deliberate political choice. When governments move to criminalise speech based on perception and designate groups as unlawful based on the Minister's view, precisely at the moment when genocide findings emerge, they are not protecting cohesion; they are actively opposing legitimate and genuine protest. They are choosing to discipline public response rather than confront the implications of the evidence. This choice has consequences. It signals that international law is something to be cited selectively rather than upheld consistently. It tells the public that legal findings are acceptable only when they do not challenge political alliances or moral narratives. It teaches that accountability is conditional and that outrage must be moderated to preserve diplomatic convenience.

The proposed Bill in response to genocide findings also distorts the role of protest in democratic societies. Protest exists to surface moral urgency when institutions fail to act. It is a mechanism through which citizens respond to evidence of grave injustice. To restrict it at the point of maximum relevance is to invert its purpose and to hollow out democratic participation. The refusal to engage honestly with genocide findings also corrodes the credibility of domestic lawmaking. Laws that restrict participation and dissent in the face of international legal alarm cannot plausibly claim to be motivated by concern for harm prevention. They operate instead as tools of containment, designed to limit the political fallout of evidence rather than address the evidence itself.

History offers a clear lesson. **In every instance where mass atrocity has later been acknowledged, early warnings were dismissed as exaggeration, activism, or destabilising rhetoric. This occurred in the Holocaust, Rwanda, Bosnia, and Myanmar, where credible warnings were sidelined in the name of political stability until the scale of harm could no longer be denied. The present moment follows the same trajectory, where legal and humanitarian alarms are treated as political noise rather than as triggers for prevention.** In each case, those who spoke out were told to moderate their language, to wait

for certainty, or to trust institutions that were already failing. The cost of that restraint was measured in lives. The present moment demands a different response. When international law determines acts as genocide, the appropriate role of a democratic government is to widen the space for scrutiny, not narrow it. It is to protect the right to speak, not criminalise it. It is to confront power, not shield it. Suppressing protest and language signals acquiescence, telling victims and observers alike that evidence can be acknowledged in courtrooms while being neutralised in public life. That contradiction cannot stand. If genocide findings are to mean anything, they must be met with openness, accountability, and courage. Anything less is not restraint. It is abdication.

Australian legal precedent

Claims that criticism of the state of Israel is inherently antisemitic have been explicitly rejected in recent Federal Court jurisprudence in Australia. The Federal Court has affirmed that robust political criticism of a state, its policies, or its ideological foundations, even when expressed in strong language, does not by itself constitute racial or religious vilification merely because the subject matter is uncomfortable or politically charged.

In *Wertheim v Haddad* [2025] FCA 720, Justice Angus Stewart of the Federal Court of Australia examined a series of sermons delivered by a Sydney preacher that contained statements about Jewish people and references to Israel. In his reasons for judgment, Justice Stewart made a clear legal distinction between unlawful discriminatory conduct and political criticism. He stated that political criticism of Israel's actions, including the conduct of the Israeli Defence Force and the ideology of Zionism, "is not by its nature criticism of Jews in general or based on Jewish racial or ethnic identity." The judge drew on comparative case law to underline this point, noting that the ordinary reasonable listener would not understand political criticism of a state's behaviour as an attack on all Jewish people merely because the subject matter intersects with Jewish identity (Birchgrove Legal, 2025).

The Federal Court's reasoning is significant because it upholds a fundamental distinction between **political speech about a state and hatred of a people**. Without this distinction, any criticism of a government's policies could be reframed as racial or religious hatred simply because those policies relate to a group's identity. That outcome would severely constrict political communication, chill dissent, and violate core principles underpinning Australian law. This legal precedent is essential for any assessment of proposed speech restrictions. It confirms that:

- Criticism of a state or government is not synonymous with discrimination against a protected group.
- Political ideas, ideologies, and conduct, even when intensely contested, are subject to protection in public discourse.
- The Racial Discrimination Act must be interpreted in a manner consistent with free expression, ensuring that robust debate remains lawful.

The proposed Bill, by contrast, would risk codifying the opposite proposition: that certain political language is presumptively harmful and thus subject to prohibition. That approach directly contradicts the Federal Court's articulation of the law in *Wertheim v Haddad*, where the court reaffirmed that political criticism is not inherently antisemitic. If the Government can criminalise political expression based on perceived impact without evidence of actual discriminatory conduct, it places itself at odds with the way Australian law has been interpreted by senior courts. Such a shift would not only be at odds with the Federal court case but would also empower authorities to suppress dissent on the basis of political interpretation rather than observable harm.

Equally important is the legal context in which these principles operate. Australian courts have recognised that freedom of political communication, though not absolute, forms an implied part of the constitutional system of representative government. This doctrine ensures that political speech cannot be unreasonably restricted without justification. Laws that single out specific slogans because they are uncomfortable or socially "contentious" fail to align with this constitutional framework.

To be precise, the Federal Court in *Wertheim v Haddad* did not hold that all speech about Israel is beyond legal scrutiny. The court did find that, on certain facts, the impugned sermons contained unlawful racial discrimination. However, the court's reasoning underscores that **the unlawful element was rooted in explicit disparagement of Jewish people, not in the mere fact of criticism of a state's conduct**. This distinction is legally critical. It means the object of analysis is conduct that harms a protected class, not the subject of political dissent. This legal principle is not a loophole. It is a safeguard. Without it, any critique of a foreign state, foreign policy, or international conduct could be captured by laws intended to prevent racial hatred. It would be a profound departure from the way Australian law, and democratic legal systems generally, differentiate **idea from identity**, **critique from discrimination**.

The proposed Bill risks embedding precisely that departure: replacing evidence-based harm thresholds with subjective interpretations of religious discourse and political expression. That is not law; it is censorship by proxy.

Political inconsistency and partisanship

The Australian Government's approach to this issue has been marked by a clear pattern of political alignment that undermines any claim of neutrality in the proposed regulation of speech. This matters because lawmaking that restricts political expression must be grounded in principled consistency. Where power is exercised selectively, the law becomes partisan by design. The Parliament House, Canberra, was l**it up in blue and white**, the colours of the Israeli flag, on the evening of Monday, 9 October 2023. This was not a minor gesture. It was a deliberate act of symbolism, signalling identification, alignment, and moral affirmation. Such gestures carry weight precisely because they are rare and reserved for moments of perceived moral clarity.

No equivalent gesture was made for Palestinian civilians. There was no illumination for children buried under rubble, for families displaced en masse, or for a population facing starvation and annihilation. This absence was not an oversight. It was a choice. In moments of profound human suffering, silence is not neutral and communicates whose lives can be grieved publicly and whose lives are treated as background noise. The imbalance extends beyond symbolism. No condemnation of genocide has been issued by the Australian Government. This omission persists despite findings by international bodies that genocide is plausibly occurring. When a leader refuses to name mass atrocities while simultaneously moving to restrict the language used by those who oppose it, the direction of power becomes unmistakable.

There has also been no meaningful acknowledgement of Palestinian suffering. Not as a central concern, nor as a moral crisis, nor as a human catastrophe demanding urgency. Instead, Palestinian existence appears only as a problem to be managed indirectly through speech regulation and protest control. This framing reduces an entire people to a source of political inconvenience. This asymmetry matters because it shapes the context in which laws are proposed and interpreted. Law does not operate in a vacuum and is read against the backdrop of political conduct. When the same government that publicly aligns itself with one side of an international conflict then seeks to criminalise the language of the other, the claim that such laws are motivated by social cohesion becomes untenable.

It is one thing for the Australian Government to express solidarity with Israel. The other issue is that such solidarity has been expressed only in one direction, while suffering has been ignored in the other. This one-sidedness erodes trust in the legitimacy of any subsequent restrictions on speech. It suggests that the law is being used to entrench a political position rather than to protect the public from harm. Bipartisanship in this context does not require neutrality on international affairs. It requires consistency in principle. If mass civilian death is condemned in one context, it must be condemned in all. If dehumanisation is treated as unacceptable, it must be addressed wherever it appears. If protest is framed as dangerous, the danger must be demonstrated rather than assumed.

Instead, what has emerged is a pattern where power is exercised with speed and certainty when Palestinian advocacy is involved, and with hesitation or silence when Palestinian suffering is at issue. Such inconsistency has real consequences and communicates to the public that some forms of grief are legitimate while others are suspect. Lawmaking that emerges from such a posture cannot credibly claim to be motivated by concern for harmony or safety. It is motivated by the desire to control narrative and contain discomfort.

Further, when governments use law to reinforce one-sided narratives, they weaken the legitimacy of the legal system itself. Citizens begin to perceive law as a tool wielded selectively by those in power, creating a destructive perception that corrodes compliance and trust. A genuinely principled approach would require confronting the full scope of human suffering, applying standards consistently, and allowing political expression to function as a means of accountability rather than a target of control. That approach has not been taken.

This failure of even-handedness is not peripheral to the debate; it is central. Lawmaking carried out under conditions of visible partisanship cannot claim neutrality. When symbolic power, moral language, and legislative force all move in the same direction, the result is not balance; it is institutionalised bias. That reality must be acknowledged plainly. The proposed restrictions on slogans are not isolated legal measures. They are the culmination of a pattern of conduct that privileges one narrative, erases another, and seeks to regulate dissent rather than address injustice.

Defining and measuring social harmony and cohesion

Currently, the Australian Government has not provided a clear definition of social harmony. It has not been explained whether harmony refers to ***the absence of protest, the absence of discomfort, reduced public disagreement, or reduced reports of hate incidents***. These are not equivalent conditions. ***A society can be deeply divided yet peaceful, vocal yet stable, critical yet cohesive***. Without clarity, the concept becomes elastic, expanding or contracting according to political needs. This elasticity is precisely what makes it unsuitable as a basis for restricting rights.

In legal terms, restrictions on expression must pursue a legitimate aim and must be necessary and proportionate to achieving that aim. Necessity cannot be demonstrated without definition. Proportionality cannot be assessed without a baseline. ***If social harmony is invoked as the justification, the state must be able to articulate what harmony looks like in operational terms and how the proposed restriction is causally connected to its preservation***. In the absence of such articulation, the law is being asked to enforce an aspiration rather than prevent a harm.

Closely connected to this problem is the question of measurement. If social harmony is said to be under threat, how is that threat identified? What indicators demonstrate its decline? Are there empirical measures, longitudinal data, or comparative benchmarks showing that particular slogans, protests, or forms of speech reduce cohesion? No such measures have been provided. Without metrics, the claim becomes unfalsifiable. Any dissent can be characterised as disruptive, and any suppression can be described as restorative.

This lack of measurability has serious consequences. It shifts decision-making away from evidence and toward discretion. When the object of regulation cannot be measured, enforcement inevitably relies on subjective judgment. In practice, this means decisions are shaped by political sensitivity, public pressure, or perceived alignment rather than demonstrable impact.

There is also a deeper conceptual flaw in treating social harmony as something that can be produced through prohibition. Social harmony is not generated by silence. It emerges from trust in institutions, consistency in the application of principles, and confidence that grievances can be expressed without penalty. Suppressing lawful political expression may reduce visible disagreement, but it does not resolve underlying tensions; it displaces them. A society that appears calm because dissent has been constrained is not necessarily cohesive. It

may simply be restrained. If the state wishes to rely on social harmony as a justification for legal restriction, it must meet a higher standard. It must define the concept with precision, identify how it is measured, demonstrate how it has been harmed, and show that the proposed response addresses that harm in a direct and proportionate way. None of these steps has been taken. In their absence, "social harmony" functions not as a legal standard but as a rhetorical device, invoked to legitimise control rather than to address evidence-based risk.

The consequence of this approach is predictable. Law is no longer used to respond to clearly defined harms but to manage perception and discomfort. This undermines legal certainty and weakens public trust. A system committed to the rule of law cannot regulate its way toward an undefined social ideal. It must instead protect the conditions that allow cohesion to develop organically: equal application of principles, openness to dissent, and restraint in the use of coercive power.

Politicking and media framing have led to a 740% rise in Islamophobia

The Government's silence in the face of openly dehumanising language directed at Palestinians is analytically significant. Public commentary describing Palestinians as having a "black heart" (The Australian, 16 January 2025) constitutes racialised dehumanisation. It attributes inherent moral corruption to an entire people, not based on conduct, but on identity. This is classic hate speech. What matters here is not only that such a statement was made, but that it circulated publicly, was not condemned by senior political figures, did not trigger legislative urgency, and was not framed as a social threat.

A 740% per cent increase in Islamophobic incidents does not occur in a social vacuum. Spikes of this scale are consistently correlated, in Australia and internationally, with periods of heightened political rhetoric, securitised framing, and sustained negative media narratives about Muslims (Cesari, 2012; Meer & Modood, 2009). Such increases are not spontaneous eruptions of prejudice. They are socially produced. When public discourse repeatedly associates Muslims with threat, extremism, or risk, hostility becomes normalised. The repetition itself does the work. Over time, suspicion hardens into assumption, and assumption into belief and action.

This pattern is well established in social research. When governments frame Muslim communities primarily through the language of security and extremism, Islamophobia rises. When political leaders speak loosely or persistently about "Islamic extremism", "radical sermons", or the need to "close legal gaps" in relation to Muslim communities, public

hostility increases. When media outlets amplify these frames without evidence or proportionality, repetition gives them legitimacy. The correlation between rhetoric and Islamophobia is strong because it operates through identifiable mechanisms. Political and media actors set the agenda by determining which issues are foregrounded and how they are framed, shaping what the public comes to associate with danger. State language then legitimates these associations by conferring authority on suspicion, exclusion, and heightened scrutiny. At the same time, an asymmetry of scrutiny takes hold. Muslims are discussed and evaluated collectively, while others are treated as individuals. This produces group stigma rather than individual accountability. A 740% per cent increase in Islamophobic incidents aligns precisely with the activation of these mechanisms operating in tandem.

Further, when one group's language is policed aggressively, and another group's dehumanisation is ignored, the state is signalling whose dignity is protected and whose is expendable. Islamophobic rhetoric and surveillance are treated as necessary tools of safety and prevention. Anti-Palestinian hate speech is treated as opinion, noise, or an unfortunate by-product of debate. One produces law while the other produces silence. This unevenness fundamentally undermines claims that proposed speech restrictions are motivated by social cohesion rather than by control.

Citations

Albanese, F. (2024). *Anatomy of a genocide: Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967* (A/HRC/55/73). United Nations Human Rights Council. https://www.ohchr.org/en/documents/thematic-reports/ahrc5573-anatomy-genocide-report-special-rapporteur

della Porta, D. (2013). *Clandestine political violence*. Cambridge University Press. https://doi.org/10.1017/CBO9781139207803

Cesari, J. (2012). Securitization of Islam in Europe. *PS: Political Science & Politics, 45*(2), 267–273. https://doi.org/10.1017/S1049096512000033

Fine, R. (2009). Fighting with phantoms: A contribution to the debate on antisemitism in Europe. *Patterns of Prejudice, 43*(5), 459–479. https://doi.org/10.1080/00313220903339006 WRAP

Gaeta, P. (2007). On what conditions can a state be held responsible for genocide? *European Journal of International Law, 18*(4), 631–648. https://doi.org/10.1093/ejil/chm040

Gerteis, J., Hartmann, D., & Edgell, P. (2020). Racial, religious, and civic dimensions of anti-Muslim sentiment in America. *Social Problems, 67*(4), 719–740. https://doi.org/10.1093/socpro/spz039

Gurr, T. R. (1970). *Why men rebel*. Princeton University Press.

Herf, J. (2005). The "Jewish War": Goebbels and the antisemitic campaigns of the Nazi Propaganda Ministry. *Holocaust and Genocide Studies, 19*(1), 51–80. https://doi.org/10.1093/hgs/dci003 OUP Academic

Hirschman, A. O. (1970). *Exit, voice, and loyalty: Responses to decline in firms, organizations, and states*. Harvard University Press.

International Court of Justice. (2024). *Application of the Convention on the Prevention and Punishment of the Crime of Genocide in the Gaza Strip (South Africa v. Israel): Order on provisional measures* (26 January 2024). https://www.icj-cij.org/case/192

Klandermans, B. (1997). *The social psychology of protest*. Blackwell Publishers.

Meer, N., & Modood, T. (2009). Refutations of racism in the "Muslim question." *Patterns of Prejudice, 43*(3–4), 335–354. https://doi.org/10.1080/00313220903109250

Schabas, W. A. (2009). *Genocide in international law: The crime of crimes* (2nd ed.). Cambridge University Press. https://doi.org/10.1017/CBO9780511575371

Straus, S. (2004). How many perpetrators were there in the Rwandan genocide? An estimate. *Journal of Genocide Research, 6*(1), 85–98. https://doi.org/10.1080/1462352042000194728 OUP Academic

Tilly, C., & Tarrow, S. (2015). *Contentious politics* (2nd ed.). Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199305090.001.0001

van Dijk, T. A. (1992). Political discourse and the denial of racism. *Discourse & Society, 3*(1), 87–118. https://doi.org/10.1177/0957926592003001005