



**Submission to the
Parliamentary Joint Committee on Intelligence and Security
("PJCIS")**

***Counter-Terrorism Legislation Amendment (Prohibited
Hate Symbols and Other Measures) Bill 2023***

July 2023

Prepared by the Muslim Legal Network (NSW)

The Muslim Legal Network NSW is an Australian-based legal practitioner and law student association. It is a gateway for Australian Muslim law students and legal practitioners to both network with one another and engage with the wider legal community. We provide community legal education and participate in law reform and legal advocacy, as well as offering a Muslim perspective on civil liberties issues.

Contact: admin@muslimlegalnetworknsw.com
 president@muslimlegalnetworknsw.com



INTRODUCTION

1. The Muslim Legal Network (NSW) (hereafter “MLNNSW”) appreciates the opportunity to make a submission regarding the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023* (hereafter “the Bill”).
2. We welcome measures to prohibit hate symbols such the Nazi swastika, which are used to cause hatred and division in the Australian community.
3. The Bill also proposes to prohibit the Islamic State flag. We are concerned that the wording and scope of Schedule 1 of the Bill may give rise to far reaching, adverse consequences for the Australian Muslim community and a Muslim’s expression of their religious beliefs.

THE SACRED WORDS ON THE FLAG

4. The so-called Islamic State (hereafter “IS”) flag displays Arabic words that represent the central tenet of the Islamic faith: *La illaha illaLlah, Muhammad Rasul Allah* which means *There is no God but Allah, Muhammad is the Messenger of God*. These words represent the heart of one’s belief in Islam and are of the utmost importance to Muslims. They pre-date the formation of IS and their use is not in any way exclusive to IS and their ideology. These sacred words have been commandeered by a group that has been emphatically rejected by Muslim scholars.
5. Given their central importance to the Islamic faith, these words are deeply revered and loved by Muslims, and are widely reproduced in various forms. For example, these words are commonly displayed in Muslim homes and depicted in art, literature, mosques, as well as on jewellery and decal stickers adhered to cars, etc. These words are so significant and widely used that they are also displayed (albeit in a different design) on the national flag of the Kingdom of Saudi Arabia.
6. Further, the flag depicts the Seal of the Prophet Muhammad (Peace Be Upon Him).¹ By way of illustration, rings depicting the words on the signet ring of the Prophet Muhammad (Peace Be Upon Him)² are readily available for purchase and may be worn as an act of worship and devotion. Examples of such rings are set out below at Figures 1-5 for your reference.

¹ Submission 77 to the Parliamentary Joint Committee on Intelligence and Security regarding the Bill by the Australian National Imams Council dated 20 July 2023, page 2. Please refer to Submission 77 for more information on this topic.

² Ibid



Figures 1 & 2³



Figures 3 & 4⁴



Figure 5⁵

7. Banning the display of “something that so nearly resembles” the IS flag “that it is likely to be confused with, or mistaken for that thing” stands to outlaw innocent depictions of the sacred words (such as the rings shown above), significantly encroach on the practise of faith and cause deep hurt to the Muslim community.

8. Much to our concern, the Explanatory Memorandum (hereafter “EM”) states that:

“It is not intended that the symbol must be displayed on a flag in order to be captured by paragraph 80.2E(a). The word ‘flag’ has simply been used as part of the name of the symbol.”⁶

9. The EM continues and states that;

“Paragraph 80.2E(d) is intended to recognise that there may be some variations in the ways in which the Islamic State flag is depicted. The legislation is not intended to be so prescriptive in defining these symbols as to exclude these variations from being captured by the provisions, where they would be recognised by the public as being the Islamic State flag...”⁷

10. This position in the EM is highly problematic given that the sacred words on the flag go to the heart of a person’s belief in Islam and are widely reproduced in various forms by Muslims, as a manifestation of their faith. Further, members of the public are likely to confuse innocent representations of the sacred words with the flag itself.

11. The EM states that the Swastika was misappropriated by the Nazi regime⁸ but fails to acknowledge that the sacred words on the Islamic State flag were also misappropriated by IS. The EM comments on the significance of the Swastika in the Buddhist, Hindu and Jain religions but does not similarly stress the significance of the holy words on the Islamic State flag to Muslims.⁹ In fact, it is very disappointing and

³ Boutique Ottoman, <https://www.boutiqueottoman.com/product/seal-of-prophet-mohammad-green-mina-ring/>

⁴ EcoleSilver on Etsy, https://www.etsy.com/au/listing/785788978/allah-rasool-ringseal-of-prophet?click_key=e7d9366ed938b3a4b72591b160e6168906edf8b0%3A785788978&click_sum=77cfa0b5&ref=shop_home_active_118&frs=1

⁵ Boutique Ottoman, <https://www.boutiqueottoman.com/product/maher-zain-ring-mohammed-rasul-allah-ring/>

⁶ Explanatory Memorandum, ‘Notes on Clauses’, page 24, paragraph 22
https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7048_ems_e001b60e-63f3-402e-b7a6-3d2519c39247%22

⁷ Explanatory Memorandum, ‘Notes on Clauses’, page 25, paragraph 32

⁸ Explanatory Memorandum, ‘Statement of Compatibility with Human Rights’, page 12, paragraph 39

⁹ Explanatory Memorandum, ‘Statement of Compatibility with Human Rights’, page 12, paragraph 39

offensive that the EM states that the Islamic State symbol “inherently” represents a “discriminatory and hateful”¹⁰ and “violent” ideology.¹¹ As stated above, the words on the flag are holy to all Muslims and enshrine the central tenet of Islam.

12. Schedule 1 of the Bill outlines the powers and the circumstances in which a police officer can issue a direction for someone to cease the display of prohibited symbols. We expect there to be occasions when law enforcement personnel and members of the public will mistakenly consider innocent representations of the sacred words to resemble a prohibited symbol as currently defined in the Bill.
13. As a result, there is a real risk of reports being wrongly made to police and over-policing. This would give rise to a waste of time and resources by law enforcement agencies as well as unwarranted stress for and risk of harassment of the Australian Muslim community.

HUMAN RIGHTS AND THE AUSTRALIAN MUSLIM COMMUNITY

14. The Bill does not adequately protect the rights of Muslims to manifest their religion under Article 18 of the *International Covenant on Civil and Political Rights* (hereafter “ICCPR”), which states that:

“Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”¹²

15. In commenting on Article 18 in the ICCPR, the UN Human Rights Committee clarifies that the display of symbols is a form of worship that needs to be protected:

“The **concept of worship extends to** ritual and ceremonial acts **giving direct expression to belief**, as well as various practices integral to such acts, including the building of places of worship, the use of ritual formulae and objects, **the display of symbols** and the observance of holidays and days of rest.”¹³ (emphasis added)

16. The rights in Article 18 of the ICCPR are also enshrined in Article 18 of the *Universal Declaration of Human Rights*¹⁴ and Article 1 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.¹⁵

17. The EM is silent regarding the way in which the Muslim community’s rights under Article 18 of the ICCPR will be protected. Using the example of the rings shown on Figures 1-5 of this submission, it is foreseeable that innocently wearing such a ring

¹⁰ Explanatory Memorandum, ‘Statement of Compatibility with Human Rights’, page 18, paragraph 69

¹¹ Explanatory Memorandum, ‘Notes on Clauses’, page 36, paragraph 104

¹² <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

¹³ ‘General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18)’ adopted by the Human Rights Committee, dated 27 September 1996, paragraph 4, page 2
https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2F21%2FRev.1%2FAdd.4&Lang=en

¹⁴ <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

¹⁵ <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination>

would be regarded as displaying a prohibited symbol. As stated above, banning something that “resembles” the IS flag encroaches on a Muslim’s ability to practise and manifest their religion.

‘RELIGIOUS PURPOSE’ DEFENCE

18. The ‘religious purpose’ defence is not protective enough and does not offset the harm that could be done by banning “something that so nearly resembles” the IS flag. The ‘religious purpose’ defence will not protect against ignorant and false reports to police, over-policing and harassment of Muslims. This is particularly relevant against the backdrop of Islamophobia that Muslims have suffered for many years.
19. In elaborating on how the ‘religious purpose’ defence could be relied upon, the EM expressly states that the intention is for Buddhists, Hindus and Jains to be able to rely upon the defence, and that the Bill seeks to expressly distinguish between the sacred Swastika and the Nazi hakenkreuz.¹⁶
20. Additionally, the EM states that if a sacred Swastika is displayed for a genuine religious purpose at a Hindu festival taking place in public, and a police officer mistakes the symbol for a Nazi hakenkreuz, the person displaying the symbol should not have to comply with a direction to cease displaying it.¹⁷ However, the EM is silent about the sacredness of the words on the Islamic State flag and how Muslims can rely on the ‘religious purpose’ defence. For example, could a person wearing one of the rings shown on Figures 1-5 of this submission as a pure act of worship refuse to comply with a direction to remove it?
21. The following instruction is provided to States in Article 4 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* (the Declaration):

“All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.”¹⁸
22. In order to fulfill Article 4 of the Declaration, Article 18 of the ICCPR and to resolve the concerns raised in this submission, we highly recommend removing all references to “something that so nearly resembles” the IS flag “that it is likely to be confused with, or mistaken for” that thing.

¹⁶ Explanatory Memorandum, ‘Notes on Clauses’, pages 33-34, paragraph 87
https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7048_ems_e001b60e-63f3-402e-b7a6-3d2519c39247%22

¹⁷ Explanatory Memorandum, ‘Notes on Clauses’, page 47, paragraph 162
https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7048_ems_e001b60e-63f3-402e-b7a6-3d2519c39247%22

¹⁸ <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-elimination-all-forms-intolerance-and-discrimination>

‘GLOBALIST JIHADIST IDEOLOGY’

23. An additional issue in the Bill is the use of political phraseology in proposed sections 80.2H(10)(f) and 80.2J(1)(c) by referring to “global jihadist ideology”. This phrase is also used in the EM.
24. The use of the phrase “global jihadist ideology” feeds into the far-right narrative that conflates Islam with violence and aggression. In Islam, the word ‘jihad’ carries multiple meanings. ‘Jihad’ is not currently used in any Federal legislation and it is unclear how this phrase is to be understood and interpreted by Courts. In these circumstances, personal bias and a political understanding of the phrase cannot be eliminated from the judicial interpretation process. Many people wrongly conflate Islam and terrorism, and the use of this phrase in the Bill risks entrenching this conflation and misrepresenting Islam.
25. Therefore, we highly recommend removing the references to “global jihadist ideology” in both the Bill and the EM.

CONCLUSION

26. The MLNNSW appreciates the need to protect the Australian community. For the reasons mentioned in this submission, we propose amendments be made to Schedule 1 in the Bill to remove references to:
 - a. “something that so nearly resembles” the IS flag “that it is likely to be confused with, or mistaken” for that thing; and
 - b. “globalist jihadist ideology”.

We also recommend corresponding changes be made to the EM.

27. The MLNNSW is more than happy to respond to any questions by the PJCIS in response to this submission and to work with other stakeholders to ensure all Australians, including the Australian Muslim community, are protected.