

Muslim Collective.

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The Parliamentary Joint Committee on Intelligence and Security (PJCIS)

Inquiry into Extremist Movements and Radicalism in Australia

Joint Submission by Muslim Collective and Liberty Victoria

1. The Commonwealth Parliamentary Joint Committee on Intelligence and Security (PJCIS) is conducting an Inquiry into Extremist Movements and Radicalism in Australia (the Inquiry).

2. Muslim Collective and Liberty Victoria welcome the opportunity to provide this joint submission to the PJCIS. Thank you for granting an extension to make this submission.

About Muslim Collective

3. Established in 2015, Muslim Collective represents a grassroots community of Muslims across Australia advocating for equality and human rights.
4. Muslim Collective has a diverse membership representing many ethnicities, races and ages. More information on the organisation and its activities can be found at: <https://muslimcollective.com>.
5. Muslim Collective has been involved in delivering social cohesion projects in partnership with the Victorian Department of Premier and Cabinet's Community Resilience Grants. It has strong ties with other Muslim community organisations in the State. The current executive committee is based in Sydney, New South Wales.
6. The focus of the following submission and recommendations reflects our experiences as Muslims living in Australia. Some of the following is drawn from doctoral research undertaken by Dr Reem Sweid¹ (Founder and Past President of Muslim Collective).

About Liberty Victoria

7. Liberty Victoria has worked to defend and extend human rights and freedoms in Victoria for more than eighty years. Liberty Victoria is a peak civil liberties organisation in Australia and advocates for human rights and civil liberties. Since 1936 Liberty Victoria has sought to influence public debate and government policy on a range of human rights issues. As such, Liberty Victoria is actively involved in the development and revision of Australia's laws and systems of government. More information on the organisation and its activities can be found at: <https://libertyvictoria.org.au>.
8. This is a public submission and is not confidential.

¹ Particularly drawn from Dr. Reem Sweid's doctoral thesis (2020): *The governmentality of radicalisation and its discontents: A critique of the problematisation of radicalisation in UK and Australian policy*. Deakin University – Alfred Deakin Institute for Citizenship and Globalisation.

Terms of Reference

9. The Inquiry's terms of reference are as follows:
- (1) the nature and extent of, and threat posed by, extremist movements and persons holding extremist views in Australia, with a particular focus on:
 - (a) the motivations, objectives and capacity for violence of extremist groups including, but not limited to, Islamist and far right-wing extremist groups, and how these have changed during the COVID-19 pandemic; and
 - (b) the risk to the community of high risk terrorist offenders;
 - (2) the geographic spread of these extremist movements and persons in Australia, and their links to international extremist organisations;
 - (3) without limiting the other matters that the Committee may consider, issues for specific inquiry are:
 - (a) changes that could be made to the Commonwealth's terrorist organisation listing laws to ensure they are fit for purpose, address current and emerging terrorist threats, reflect international best practice, and provide a barrier to those who may seek to promote an extremist ideology in Australia;
 - (b) changes that could be made to Australia's Counter-Terrorism Strategy in relation to preventing radicalisation to extremist views, including the capacity for further partnership approaches with state, territory and local governments;
 - (c) the role and influence of radical and extremist groups, which currently fall short of the legislative threshold for proscription, in fostering disharmony in Australia and as a conduit to persons on a pathway to extremism;
 - (d) further steps that the Commonwealth could take to disrupt and deter hate speech and establish thresholds to regulate the use of symbols and insignia associated with terrorism and extremism, including online, giving consideration to the experience of other countries;
 - (e) further steps the Commonwealth could take to reinforce social cohesion, counter violent extremism and address the growing diversification of extremist ideology in Australia;

- (f) the role of social media, encrypted communications platforms and the dark web in allowing extremists to communicate and organise; and
- (g) any other matters related to these terms of reference, noting the roles and responsibilities of states and territories in Australia's counter-terrorism arrangements, and constitutional limitations.

10. These terms of reference will be addressed in turn.

The nature and extent of, and threat posed by, extremist movements and persons holding extremist views in Australia, with a particular focus on:

- (a) the motivations, objectives and capacity for violence of extremist groups including, but not limited to, Islamist and far right-wing extremist groups, and how these have changed during the COVID-19 pandemic; and**
- (b) the risk to the community of high risk terrorist offenders.**

Overview

- 11. We accept that extremist movements and actors pose a significant threat to the Australian Community. However, over the past two decades there has been a focus on the danger of Islamist extremism at the expense of proper attention being given to the resurgence of far-right extremism.
- 12. This has included unfair and politically opportunistic attacks on Muslim community leaders for not doing more to address the issue of extremism within Muslim communities.²
- 13. As demonstrated by the Christchurch massacre, the danger of far-right extremism is all too real, can be fostered by Australian far-right movements, and can result in tragedy close to home.
- 14. Not only was the Christchurch gunman³ Australian, he had online contact and interaction with far-right extremist Australian groups.⁴ As found in the Christchurch Inquest:

² Reem Sweid, "Muslims are Speaking Out But No One Is Listening", Sydney Morning Herald, 1 October 2015, <<https://www.smh.com.au/opinion/muslims-are-speaking-out-but-no-one-is-listening-20140930-10nkr.html>>.

³ We have determined not to refer to his name so as not to provide him with recognition.

⁴ Alex Mann, Kevin Nguyen and Katherine Gregory, "Christchurch shooting accused Brenton Tarrant supports Australian far-right figure Blair Cottrell", ABC News (Web Page, 23 March 2019), <<https://www.abc.net.au/news/2019-03-23/christchurch-shooting-accused-praised-blair-cottrell/10930632>>.

The individual was one of more than 120,000 followers of the United Patriots Front Facebook page. United Patriots Front was a far right group based in Australia. Between April 2016 and early 2017, the individual made approximately 30 comments on their Facebook page. At that time, the United Patriots Front was led by Blair Cottrell. Several of the posts made by the individual expressed support for Blair Cottrell. For example, when Donald Trump was elected President of the United States of America, the individual posted on Facebook “globalists and Marxists on suicide watch, patriots and nationalists triumphant – looking forward to Emperor Blair Cottrell coming soon”. The individual also expressed support for Blair Cottrell on the True Blue Crew Facebook page. The True Blue Crew is another far right Australian group.

In one post to the United Patriots Front Facebook page, the individual threatened critics of Blair Cottrell by saying that “communists will get what communists get, I would love to be there holding one end of the rope when you get yours traitor”. In August 2016, he sent comments via Facebook Messenger to an Australian critic of the United Patriots Front, which included “I hope one day you meet the rope.” This threat was allegedly reported to Australian police but no action was taken. We see references to “the rope” as alluding to the “Day of the Rope” which features in *The Turner Diaries* and, as explained in Part 2, chapter 5, is sometimes used by those on the extreme right to refer to a race war.⁵

15. The risk of far-right extremism is also demonstrated by the recent sentencing in the Supreme Court of Victoria for a man for committing an act in preparation, or planning, of a terrorist act contrary to s 101.6 of the *Criminal Code Act 1995 (Cth)* (‘the Code’).⁶ He intended to attack sites and/or persons associated with left-wing ideology.
16. Of course there have been examples of acts of terrorism committed in Australia by Islamic extremists. However, it is our submission that the myopic focus on Islamist extremism has seen an over-policing and over-surveillance of Muslim communities, with the result that the stigma of criminality has been imparted on a part of the Australian community (and erroneously perceived by some others to be reflective of the values of that community) which is counterproductive to community harmony, and corrosive of trust with law enforcement and security services.
17. Such experiences, particularly of young Muslims, are well documented by Dr Randa Abdel-Fattah in her recently published book ‘Coming of Age in the War on Terror’.⁷ Such experiences demonstrate the harm caused by stigmatic shaming of minority communities, the vast majority of which never engage in extremism let alone terrorism.

⁵ *Ko tō tātou kāinga tēnei: Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*, [12]-[13].

⁶ *CDPP v Galea* [2020] VSC 750 (20 November 2020).

⁷ (Trade Paperback, February 2021).

Motivations, Objectives and Capacity

18. In relation to issues of the motivations, objectives and capacity for violence of extremist groups, it is important to recognise that academic understandings of the motivations of extremist individuals who turn to violence has changed over the years.⁸
19. Political violence was initially understood to be a rational choice taken by individuals dedicated to their cause and frustrated with slow (or non-existent) progress towards their goals.⁹ Violence was considered to be symbolic and strategic, a way to gain (often global) attention and even build solidarity. For example, during the 'Troubles' the actions of the Irish Republican Army were seen as rational albeit criminal actions with political motivations.¹⁰
20. However, since the 'War on Terror', the discourse and general understanding of radicalisation and extremism has become singularly focussed on ideology as the root cause of violence.¹¹ The focus has also been on identifying what is commonly known as 'vulnerability factors' such as lack of social cohesion, often explicitly focussed on Muslims and migrants.¹²
21. Motivations and objectives of 'radicalisation' in government policy (in Australia, in the United Kingdom ('UK') and in other countries) explicitly and implicitly focussed only on Islamist extremism, ignoring other forms of extremism.¹³ This has significantly undermined an accurate understanding of extremism. As early as 1988, leading experts in the field Schmid and Jongman summarised a comprehensive literature review by stating "there are probably few areas in the social science literature in which so much is written based on so little research".¹⁴

⁸ Randy Borum, "Rethinking Radicalization," *Journal of Strategic Security* 4, no. 4 (2011): 1–6, <http://scholarcommons.usf.edu/jss/>; Peter Neumann and Scott Kleinmann, "How Rigorous Is Radicalization Research?," *Democracy and Security* 9, no. 4 (2013): 360–82, <https://doi.org/10.1080/17419166.2013.802984>.

⁹ Jeffrey Monaghan and Adam Molnar, "Radicalisation Theories, Policing Practices, and 'the Future of Terrorism?'," *Critical Studies on Terrorism* 9, no. 3 (2016): 393–413, <https://doi.org/10.1080/17539153.2016.1178485>; Anthony Richards, "Characterising the UK Terrorist Threat: The Problem with Non-Violent Ideology as a Focus for Counter-Terrorism and Terrorism as the Product of 'Vulnerability,'" *Journal of Terrorism Research* 3, no. 1 (2012): 17–26, <https://doi.org/10.15664/jtr.414>.

¹⁰ James McClenon, "Terrorism as Persuasion: Possibilities and Trends," *Sociological Focus* 32, no. 2 (1988): 53–66.

¹¹ Randy Borum, "Radicalization into Violent Extremism I: A Review of Social Science Theories," *Journal of Strategic Security* 4, no. 4 (2011): 7–36, <https://doi.org/10.5038/1944-0472.4.4.1>; Randy Borum, "Radicalization into Violent Extremism II: A Review of Conceptual Models and Empirical Research," *Journal of Strategic Security* 4, no. 4 (2011): 37–62, <https://doi.org/10.5038/1944-0472.4.4.2>.

¹² Jonathan Githens-Mazer, "The Rhetoric and Reality : Radicalization and Political Discourse," *International Political Science Review* 33, no. 5 (2012): 556–67, <https://doi.org/10.1177/01925121>.

¹³ Reem Sweid, "The Governmentality of 'Radicalisation' and Its Discontents : A Critique of the Problematisation of 'Radicalisation' in Australian and UK Policy" (Deakin University, 2020), https://www.researchgate.net/publication/344944551_The_Governmentality_of_Radicalisation_and_its_Discontents_A_critique_of_the_problematisation_of_radicalisation_in_UK_and_Australian_policy.

¹⁴ Alex P. Schmid and Albert J. Jongman, *Political Terrorism: A New Guide to Actors, Authors, Concepts, Data Bases, Theories, and Literature* (Transaction Publishers, 1988), 178.

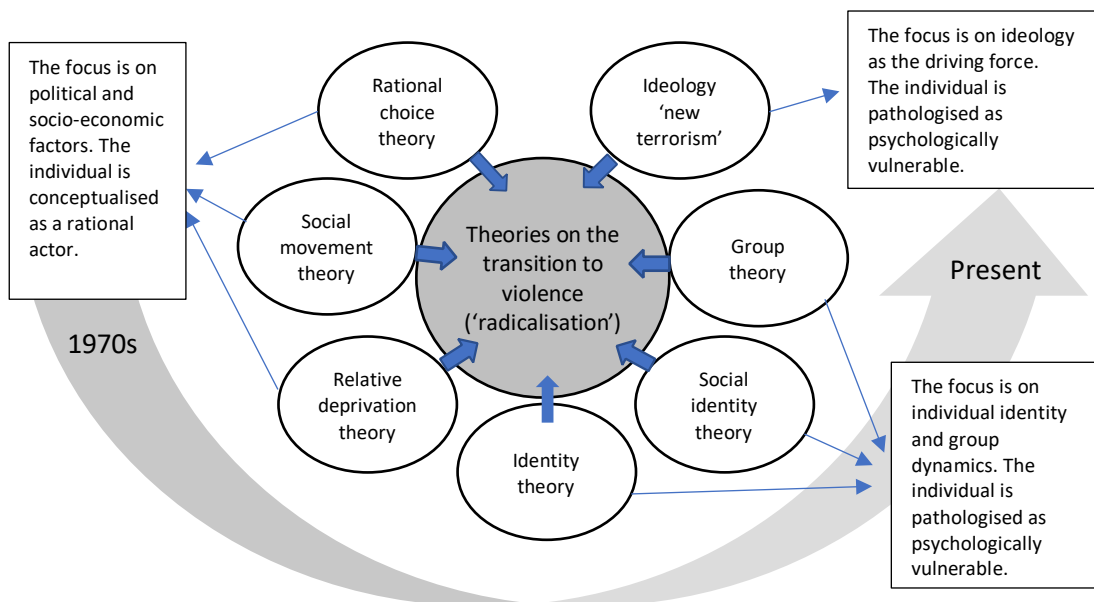
22. In 1992, another leading expert Hoffman stated:

Fifteen years ago, the study of terrorism was described by perhaps the world's preeminent authority on modern warfare as a 'huge and ill-defined subject [that] has probably been responsible for more incompetent and unnecessary books than any other outside the field of sociology. It attracts phonies and amateurs... as a candle attracts moths... Terrorism research arguably has failed miserably.'¹⁵

23. The state of academic research in the 21st century does not offer much more hope.¹⁶

24. The almost exclusive focus on 'Islamic terrorism' has proven to be a costly diversion of resources as theories (and corresponding policies) to prevent radicalisation are not applicable to the emerging threat of far-right extremism. As Kundnani states, for much of the past two decades research studies have focussed on understanding 'why do some individual Muslims support an extremist interpretation of Islam that leads to violence'?¹⁷

25. The figure below demonstrates how (over decades) academics and experts have shifted from understanding political violence as rational response to political and socio-economic factors, towards a pathologised understanding of radicalisation as an individualised socio-psychological event.



¹⁵ Bruce Hoffman, "Current Research on Terrorism and Low-intensity Conflict," *Studies in Conflict and Terrorism* 15, no. 1 (1992): 25–28, <https://doi.org/10.1080/10576109208435889>.

¹⁶ Lisa Stampnitzky, *Disciplining Terror* (Cambridge: Cambridge University Press, 2013).

¹⁷ Arun Kundnani, "Radicalisation: The Journey of a Concept," *Race & Class* 54, no. 2 (October 18, 2012): 5, <https://doi.org/10.1177/0306396812454984>.

26. The reality of the motivations and objectives of individuals and groups associated with political violence is complex and varied. It cannot and should not be assumed that there is a one-size-fits-all model. Some individuals turn to political violence for rational and carefully thought through reasons, others may do so in pursuit of personal significance or even a misguided sense of adventure. It is vital that any policy that seeks to prevent political violence recognises the lack of generalisability and the complex nature of the problem.

Capacity for Violence

27. It is impossible to empirically validate the level of threat posed by extremist groups. Based on past events, experts agree that only an 'infinitesimally small' minority of people who hold extremist beliefs actually transition to violence.¹⁸ There is no empirically robust method to identify who these individuals will be.¹⁹
28. As a result, policies to prevent political violence have expanded to address the adoption of extremist views in general. This trend towards widening the net can result in an overstated level of threat.²⁰
29. The level of threat can also be overstated as a result of the large number of people arrested and charged with non-violent inchoate terrorism offences, particularly in the UK and the United States of America ('US').²¹ In the UK most terrorism-related offences are entirely unconnected with any actual violence and certainly not the extreme violence that the discourse on terrorism suggests.²²
30. The underlying assumption that supports these pre-emptive policies, laws and severe punishments is that there is a 'radicalisation process' often described as a 'slippery slope' or a 'conveyor belt', in which individuals gradually become increasingly entrenched in their radical ideas and ultimately transition from cognitive extremism to behavioural (violent)

¹⁸ Catherine Schmidt, George Joffé, and Elisha Davar, "The Psychology of Political Extremism," *Cambridge Review of International Affairs* 18, no. 1 (2005): 186, <https://doi.org/10.1080/09557570500060157>.

¹⁹ Jonathan A Rae, "Will It Ever Be Possible to Profile the Terrorist?," *Journal of Terrorism Research* 3, no. 2 (September 22, 2012), <https://doi.org/10.15664/jtr.380>.

²⁰ Asim Qureshi, "PREVENT: Creating 'Radicals' to Strengthen Anti-Muslim Narratives," *Critical Studies on Terrorism* 8, no. 1 (2015): 181–91, <https://doi.org/10.1080/17539153.2015.1005938>; Githens-Mazer, "The Rhetoric and Reality: Radicalization and Political Discourse."

²¹ Stephen Downs and Kathy Manley, "Inventing Terrorists: The Lawfare of Preemptive Prosecution" (Project Salam and the National Coalition to Protect Civil Freedoms, 2014), 1, <http://www.projectsalam.org/Inventing-Terrorists-study.pdf>.

²² Jude McCulloch and Sharon Pickering, "Pre-Crime and Counter-Terrorism: Imagining Future Crime in the 'War on Terror,'" *British Journal of Criminology*, no. May (2009): 636, <https://doi.org/10.1093/bjc/azp023>.

extremism. However, almost all experts agree that the transition to violence is not linear or predictable.²³

31. In fact, there is little concrete evidence to support any single radicalisation process, and most of the time individuals who hold extremist views do not escalate to violence. They often deescalate from these views without intervention. Assessing risk of violence is very difficult and is often affected by systemic structural racism.²⁴
32. These contested theories suggesting a linear radicalisation process provide the justification for pre-emptive prosecutions and ‘sting’ operations that target non-violent individuals who represent a potential for violence because of their political or religious beliefs. Journalists and academics have documented how secret service agencies (in the US, Canada and the UK) have applied ethically questionable tactics to secure terrorism arrests and convictions through operations with agent provocateurs that prey on marginalised individuals, sometimes with mental illnesses.²⁵
33. In Australia we also have the potential for undercover controlled operations, including pursuant to Part IAB of the *Crimes Act 1914* (Cth). These powers were introduced as a consequence of the judgment of the High Court with regard to illegal police conduct in *Ridgeway v The Queen* (1995) 184 CLR 19. They protect law enforcement officers from criminal and civil liability in tightly controlled circumstances, but prohibit inducement.
34. The justification for this approach – that suspected individuals had radical sympathies that would eventually have been exploited by real terrorist influencers – has been found to be implausible.²⁶
35. Having extremist ideas is not a reliable indicator for future violence²⁷ and these individuals often only became involved in terrorism offences after engagement with informants and

²³ Borum, “Radicalization into Violent Extremism I: A Review of Social Science Theories.”

²⁴ Tarek Younis and Sushrut Jadhav, “Keeping Our Mouths Shut: The Fear and Racialized Self-Censorship of British Healthcare Professionals in PREVENT Training,” *Culture, Medicine and Psychiatry* 43, no. 3 (2019): 404–24, <https://doi.org/10.1007/s11013-019-09629-6>; Marie Breen-Smyth, “Theorising the ‘Suspect Community’: Counterterrorism, Security Practices and the Public Imagination,” *Critical Studies on Terrorism* 7, no. 2 (2014): 223–40, <https://doi.org/10.1080/17539153.2014.945308>.

²⁵ Trevor Aaronson, “To Catch the Devil: A Special Report on the Sordid World of FBI Terrorism Informants,” *Foreign Policy*, May 2015, <https://foreignpolicy.com/2015/05/12/to-catch-the-devil-fbi-informant-program/>; Human Rights Watch, *Illusion of Justice: Human Rights Abuses in US Terrorism Prosecutions*, 2014, <http://www.hrw.org/node/126101>; Jesse J. Norris and Hanna Grol-Prokopczyk, “Temporal Trends in US Counterterrorism Sting Operations, 1989–2014,” *Critical Studies on Terrorism* 11, no. 2 (2018): 243–71, <https://doi.org/10.1080/17539153.2017.1400421>.

²⁶ Norris and Grol-Prokopczyk, “Temporal Trends in US Counterterrorism Sting Operations, 1989–2014.”

²⁷ Clark McCauley and Sophia Moskalenko, “Toward a Profile of Lone Wolf Terrorists: What Moves an Individual from Radical Opinion to Radical Action,” *Terrorism and Political Violence* 26, no. 1 (2014): 69–85, <https://doi.org/10.1080/09546553.2014.849916>.

agents who have befriended and arguably induced them.²⁸ This approach has deleterious effects on individuals tangled up in ‘sting’ operations, whether directly or indirectly (as family members) and reinforces mistrust of government and law enforcement. It may result in persons receiving lengthy sentences of imprisonment who would not have posed threats to the community but for the actions of police and security services – and certainly reflects an emphasis on punishment and general deterrence over de-escalation and rehabilitation of what are often youthful and isolated offenders.

36. It is our submission that those working to prevent political violence should refrain from actions and activities that procure or induce individuals to commit offences and should instead focus on rehabilitating persons that demonstrate extremist attitudes and beliefs.
37. Preventing political violence (counter-terrorism) policies and laws should focus specifically on identifying individuals who are engaged in preparing for an attack, not individuals who exhibit ‘vulnerability factors’ and express extremist beliefs. That is not to say that intervention for such persons is not necessary, but this intervention should not be punitive. Rather, intervention for individuals who hold extremist beliefs should be supportive and address the underlying challenges for that specific individual.
38. Unfortunately, the programs providing de-radicalisation, such as provided by Victoria Police’s Countering Violent Extremism Specialist Unit, appear to be chronically under resourced, as perhaps most powerfully demonstrated an arguable system failure revealed by the recent inquest into the attack at Pellegrini’s in Bourke St, Melbourne in 2018.²⁹
39. Instead of focussing on the prevention of terrorist acts, the Australian Government has instead enacted suites of laws over the past two decades that seek to respond to terrorist activity, many of which arguably erode fundamental principles of the rule of law, the separation of powers and our obligations under international law. This includes citizenship revocation laws,³⁰ mandatory non-parole periods (as a proportion of the head sentence) and highly restrictive parole laws,³¹ supervision orders,³² and now continuing detention

²⁸ John Mueller and Mark G. Stewart, *Chasing Ghosts: The Policing of Terrorism* (New York, NY: Oxford University Press, 2016); Marc Sageman, “The Stagnation in Terrorism Research,” *Terrorism and Political Violence* 26, no. 4 (2014): 565–80, <https://doi.org/10.1080/09546553.2014.895649>.

²⁹ Tessa Akerman, “Inquest hears how cops failed to stop Sisto Malaspina killer”, *The Australian*, 24 November 2020, <<https://www.theaustralian.com.au/nation/inquest-hears-how-cops-failed-to-stop-sisto-malaspina-killer/news-story/3d57ebb2ba4a163658d902b8a1a90320>>.

³⁰ See Liberty Victoria’s submission on the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019, <<https://libertyvictoria.org.au/content/review-australian-citizenship-amendment-citizenship-cessation-bill-2019>>.

³¹ See, eg, *Crimes Act 1914* (Cth), s 19AG.

³² See *Thomas v Mowbray* (2007) 233 CLR 307.

orders (found to be constitutional by a majority of the High Court in the recent judgment of *Minister for Home Affairs v Benbrika* [2021] HCA 4).

40. In light of this rapid legislative reform, we need to take pause and seriously consider whether, even from a truly conservative standpoint, the damage that we are inflicting on fundamental norms of our systems of government and institutions are justifiable, or whether by diminishing such norms we are in fact demonstrating vulnerability to extremist ideologies that would seek to erode our institutions, human rights and the rule of law.

Pivoting the Focus Back to Individual, Social and Structural Factors

41. Policies to prevent radicalisation have erroneously focussed on ideology as the root cause. The premise being that extremist ideology is (as often described) a virus that can infect vulnerable individuals and lead them to become violent.³³ In fact, exposure to extremist ideologies does not lead to adoption of those beliefs. The majority of the population are exposed to these ideas, but easily reject them. It is not the idea itself that serves as the pull factor, but the social and personal benefit an individual can gain by believing these ideas.³⁴
42. It is ill-advised to believe that censoring ideas and proscribing organisations will eliminate the problem. Extremism is a symptom of a malady, not the disease itself.
43. The belief that exposure to an extremist ideology is the cause driving extremism garnered momentum after 9/11 due to a number of reasons.³⁵ First, it allowed for a targeted approach of prevention (focussing on Muslims). Secondly, it fell neatly into the foreign policy rhetoric about the threat from Muslim countries (and other racial tropes). Thirdly, it elided the discussion on grievances that have historically been directly linked to all forms of political violence. In other words, focussing on an 'evil ideology' as the problem distracts from (and in some cases stifles) discussion of the grievances that some adherents to these ideologies have.³⁶
44. A productive approach to understanding the root causes of extremism is to search for the commonality across all extremist ideologies. Two dominant issues are: shared grievances

³³ Sweid, "The Governmentality of 'Radicalisation' and Its Discontents: A Critique of the Problematisation of 'Radicalisation' in Australian and UK Policy."

³⁴ Imran Awan, "I Am a Muslim Not an Extremist": How the Prevent Strategy Has Constructed a 'suspect' Community," *Politics and Policy*, 2012, <https://doi.org/10.1111/j.1747-1346.2012.00397.x>.

³⁵ Arun Kundnani, "The Muslims Are Coming! Islamophobia, Extremism, and the Domestic War on Terror" (Verso, 2014).

³⁶ Sweid, "The Governmentality of 'Radicalisation' and Its Discontents: A Critique of the Problematisation of 'Radicalisation' in Australian and UK Policy."

and crisis of identity (individual, group or national). These are common among ISIS, extreme-right, anarchists and Incel extremists.

45. The focus should move away from 'preventing radicalisation' towards a more constructive approach of addressing the underlying social and structural issues that are fuelling systemic inequality, injustice, racism, as well as a declining trust in institutions, government authority and the media. These issues are leading to the common denominator problems that drive people to extremism (grievances, mistrust of institutions, and fractured identities).
46. A more holistic approach should be taken rejecting the focus on ideology as a root cause and censorship and proscription as primary defence, which does not address the actual drivers that lead people to search for 'alternative facts' and become vulnerable to conspiracy theories.
47. The prevention of violent terrorism should be disassociated from the prevention of extremism. These are two very different problems, the former being highly individualised and requiring the engagement of police and intelligence services and the latter being a societal and structural problem requiring serious reflection on the dramatic and rapid cultural changes that have occurred over the past few decades.
48. Disassociation does not suggest that the damage caused by (nonviolent) extremism and polarisation is not serious. It requires immediate attention and significant investment. Primarily the focus needs to be on identifying and addressing any shared grievances and working towards constructing a harmonious collective identity.³⁷ This can only be done with the free engagement of ideas and speech. Therefore, censorship as an approach to preventing extremism can in fact be counter-productive.

In short, there is no definitive way to identify who will escalate to violence. This creates a significant policy challenge as when the prevention of 'violence' becomes practically impossible, prevention of extremism becomes the goal. However, prevention of extremism must involve addressing root causes and not simply pursuing censorship, proscription and surveillance.

³⁷ This includes addressing issues that continue to perpetuate the myth of white Australia, such as Commonwealth reluctance to offer indigenous voice to parliament and other historical and racial prejudices that exist within government including the meagre representation from Australians with diverse ethnic backgrounds

The geographic spread of these extremist movements and persons in Australia, and their links to international extremist organisations;

49. In relation to this term of reference we only note, as demonstrated by the links between the Christchurch gunman and Australian far-right groups, as well as the engagement of Islamic extremists and ISIS propaganda, that such links are regularly international and amorphous. The emergence of extremism, in all its forms, is clearly an international problem.
50. There is also clearly the emergence of a far-right international movement, initially linked by international websites such as (the now disbanded) Stormfront.org and various conspiracy theories disseminated through online forums such as 4chan. The problem is like that of the hydra — as one head is removed two others emerge. As will be discussed below that is why a blunt reactionary approach to extremism, such as proscription and censorship, will never succeed. What is needed is a proactive approach that addresses the root causes of extremism.

Without limiting the other matters that the Committee may consider, issues for specific inquiry are:

- (a) **changes that could be made to the Commonwealth's terrorist organisation listing laws to ensure they are fit for purpose, address current and emerging terrorist threats, reflect international best practice, and provide a barrier to those who may seek to promote an extremist ideology in Australia;**
- (b) **changes that could be made to Australia's Counter-Terrorism Strategy in relation to preventing radicalisation to extremist views, including the capacity for further partnership approaches with state, territory and local governments;**
- (c) **the role and influence of radical and extremist groups, which currently fall short of the legislative threshold for proscription, in fostering disharmony in Australia and as a conduit to persons on a pathway to extremism;**
- (d) **further steps that the Commonwealth could take to disrupt and deter hate speech and establish thresholds to regulate the use of symbols and insignia associated with terrorism and extremism, including online, giving consideration to the experience of other countries;**

- (e) further steps the Commonwealth could take to reinforce social cohesion, counter violent extremism and address the growing diversification of extremist ideology in Australia;**
- (f) the role of social media, encrypted communications platforms and the dark web in allowing extremists to communicate and organise; and**
- (g) any other matters related to these terms of reference, noting the roles and responsibilities of states and territories in Australia's counter-terrorism arrangements, and constitutional limitations.**

51. In relation to this term of reference we focus on three issues: (1) the problem with defining terrorism; (2) proscription; (3) censorship; and (4) the role of social media, encrypted communications platforms and the dark web in allowing extremists to communicate and organise.

Overview – The Problem With Defining Extremism

52. A significant challenge with proscription and censorship is that it is often difficult to know where to draw the line between political speech and potentially extremist speech.
53. After announcing the UK Counter-Extremism Bill in 2015, UK ministers struggled to agree on a legally robust definition of extremism,³⁸ eventually framing extremism (in the negative) as: ‘the vocal or active opposition to our fundamental values, including democracy, the rule of law, individual liberty and the mutual respect and tolerance of different faiths and beliefs. We also regard calls for the death of members of our armed forces as extremist’.³⁹ This definition has been widely criticised by civil groups and academics.⁴⁰
54. The conceptualisation of ‘extremism’ has been tainted as a result of over two decades of tunnel vision focus on Islamist extremism. Undoing this bias will take proactive effort on the part of law enforcement and policy makers.
55. As it stands, government policy documents implicitly describe extremists as young, socially-marginalised, disadvantaged, frustrated and impressionable (often migrant)

³⁸ Alan Travis, “Paralysis at the Heart of UK Counter-Extremism Policy,” *The Guardian*, September 17, 2017, <https://www.theguardian.com/uk-news/2017/sep/17/paralysis-at-the-heart-of-uk-counter-extremism-policy>.

³⁹ H. M. Government, “Counter-Extremism Strategy” (H. M. Government, 2015), 9, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470088/51859_Cm9148_Accessible.pdf.

⁴⁰ Jamie Grierson and Vikram Dodd, “Prevent Strategy on Radicalisation Faces Independent Review,” *The Guardian UK*, January 22, 2019, <https://www.theguardian.com/uk-news/2019/jan/22/prevent-strategy-on-radicalisation-faces-independent-review>.

individuals who have adopted dangerous and illiberal values.⁴¹ These descriptions do not accurately reflect the range of extremists.

56. Policies should recognise that there is insufficient evidence to suggest a link between poverty and lack of education and extremism. Recent experience in the United States with QAnon supporters evidences this fact (their supporters include congresswomen, celebrities and technology executives).⁴² Belief in such conspiracy theories is likely more to do with a loss of trust in institutions and a personal or group grievance (for example white nationalists may be grieving loss of power and significance).
57. The existing Counter-Terrorism Strategy was designed to address Islamist extremists and many of the approaches cannot effectively be applied to far-right extremists. The disproportionate focus on Muslims has also had the counter-productive effect of further polarising society and fueling racism.⁴³ A more preventative approach that addresses society-wide issues and structural discrimination is likely to be more effective.

Proscription

58. Proscription and censorship should not be the first line of defence used to address the problem of extremism. Proscription is largely a symbolic act signaling government disapproval of particular views and a willingness to prosecute. It may be an effective deterrent if coupled with active police engagement and prosecution.⁴⁴ However, it does not address underlying causes that are drawing people to extremist beliefs.
59. Also, we note there are significant legal issues with the proscription of terrorist organisations, as explained by Ms Jessie Smith, PhD Candidate at the University of Cambridge and John Monash Scholar, in her submission to the Committee. We respectfully adopt that submission.
60. Any decisions on proscription (and for that matter censorship) should be fair, transparent, non-discriminatory and open to review. Such decisions need to give due weight to the

⁴¹ Sweid, "The Governmentality of 'Radicalisation' and Its Discontents: A Critique of the Problematisation of 'Radicalisation' in Australian and UK Policy," paras. 152–156.

⁴² Matthew Rosenberg, "A QAnon Supporter is Headed to Congress", *The New York Times*, Nov. , 2020, <https://www.nytimes.com/2020/11/03/us/politics/qanon-candidates-marjorie-taylor-green.html>; James Crowley, "6 Celebs Who Have Helped Spread the QAnon Conspiracy", *Newsweek*, Aug. 20, 2020, <https://www.newsweek.com/celebrities-who-have-tweeted-about-qanon-1526473>; Kate Gibson, "Citigroup Fires Tech Executive Who Ran Popular QAnon Website", *CBS News*, Oct. 7, 2020. <https://www.cbsnews.com/news/citigroup-fires-jason-gelinas-qanon-website/>

⁴³ Sweid, "The Governmentality of 'Radicalisation' and Its Discontents: A Critique of the Problematisation of 'Radicalisation' in Australian and UK Policy."

⁴⁴ Chris Allen, 2018. "Proscribing National Action: has it been effective?", *Opendemocracy.net*, <https://www.opendemocracy.net/en/opendemocracyuk/proscribing-national-action-has-it-been-effective/>

implied constitutional freedom of political communication and Australian's obligations to protect freedom of expression under international law.

61. Despite rising levels of right-wing violence, there is a common framing of far-right terrorism or domestic terrorism as being 'terrorism lite' and not as serious.⁴⁵ Nevertheless, there is significant evidence to suggest this is a rising threat and to support the link between hate groups, violence and terrorism.⁴⁶
62. Australia lags behind other States in its willingness to proscribe far-right organisations. The US, UK, Canada and Germany (among others) have proscribed a range of far-right and white-supremacist organisations that are active in Australia.
63. There has been increasing pressure from experts to acknowledge the threat of far-right extremism in Australia and the UK.⁴⁷ In February 2020, the UK proscribed its second far-right-wing organisation.⁴⁸ However, in Australia, despite explicit concerns being raised by the head of the security services, the country has yet to proscribe any far-right organisations as terrorist organisations.⁴⁹

Censorship - Hate Speech and Symbols and Insignia Associated with Terrorism

64. Liberty Victoria has a long and proud history of calling for the protection of freedom of expression and the implied constitutional freedom of political communication. For example, we have submitted to the 2016 Commonwealth Freedom of Speech Inquiry that, in order to properly balance competing rights, 'offend' and 'insult' should be removed from the *Racial Discrimination Act 1975* (Cth) ('RDA').⁵⁰
65. In that submission, we also recommended:

⁴⁵ Weiyi Cai and Simone Landon, "Attacks by White Extremists Are Growing. So Are Their Connections.," *New York Times*, April 3, 2019, para. 29, <https://www.nytimes.com/interactive/2019/04/03/world/white-extremist-terrorism-christchurch.html>.

⁴⁶ Amy Adamczyk et al., "The Relationship between Hate Groups and Far-Right Ideological Violence," *Journal of Contemporary Criminal Justice* 30, no. 3 (2014): 310–32, <https://doi.org/10.1177/1043986214536659>.

⁴⁷ Drew Rooke, "Right-Wing Terrorism on the Rise in Australia," *The Saturday Paper*, March 2020; Jessie Smith, "Australia Recognises the Threat Posted by Far-Right Groups. So, Why Aren't They Listed on the Terror Register?," *The Conversation*, March 19, 2020, <https://theconversation.com/australia-recognises-the-threat-posted-by-far-right-groups-so-why-arent-they-listed-on-the-terror-register-134019>; Henry Storey, "Is Australia Taking the Threat of Right-Wing Terrorism Seriously?," *The Diplomat*, April 10, 2020.

⁴⁸ Jamie Grierson, "UK to Ban Neo-Nazi Sonnenkrieg Division as a Terrorist Group," *The Guardian UK*, February 25, 2020, <https://www.theguardian.com/uk-news/2020/feb/24/uk-ban-neo-nazi-sonnenkrieg-division-terrorist-group>.

⁴⁹ Smith, "Australia Recognises the Threat Posted by Far-Right Groups. So, Why Aren't They Listed on the Terror Register?"

⁵⁰ See our submission to the Freedom of Speech Inquiry, 23 September 2016, <<https://libertyvictoria.org.au/content/freedom-speech-inquiry>>.

- (1) That in s 18D, the words 'public comment done reasonably and in good faith' be replaced with the words 'in good faith and the absence of malice';
- (2) That a new offence be created within Part II of the *RDA* to the effect that it will be 'an offence for a person to engage in speech that constitutes racial hatred, ridicule or contempt against a person or group on the ground of their race';
- (3) Section 46P of the *RDA* should be amended to provide that a complaint must be in writing. In the complaint, a complainant should be required to set down the relevant facts upon which it is alleged that an act of unlawful discrimination has occurred;
- (4) Section 46P of the *RDA* should be amended to provide that, prior to being accepted by the Commission, a written complaint must state facts with respect to an alleged act of discrimination that, in the opinion of the President of the Commission or his or her authorised delegate, are sufficient to found a prima facie case of discrimination;
- (5) Section 46PO of the *RDA* should be amended to provide that if a complaint has been dismissed by the President, or his or her authorised delegate, on the grounds set down in s.46PH(1)(a)–(g), an application for review of the decision may not proceed in the Federal Court or the Federal Circuit Court without the Court's leave; and
- (6) To avoid further instances of unjust and indefensible delays in the Commission's investigative and conciliation processes, the budget cuts made to the AHRC in the Federal Budgets in 2014-2016, should be reversed.

66. We should note, for completeness, such measures would not prevent the prosecution of offenders for engaging in serious religious vilification (including the incitement of hatred, serious contempt, revulsion or severe ridicule) contrary to legislation such as s 25 of the *Racial and Religious Tolerance Act 2001* (Vic), as occurred in the case of *Blair Cottrell v Erin Ross* [2019] VCC 2142. In that judgment, his Honour Chief Judge Kidd observed:

[T]he offence does not capture mere contempt, distaste and ridicule. I reject the appellant's suggestion, for example, that the section will capture 'seriously unkind' conduct or 'bad thoughts'. Such arguments ignore the plain words of the statutory text, and the relevant legislative context.⁵¹

⁵¹ At [38].

67. Chief Judge Kidd also noted:

The following conclusions may be drawn from the legislation itself, and from the extrinsic materials:

- The legislature considered there was a genuine need to address the issue of racial and religious vilification and the harm caused by that conduct in Victoria.
- The social benefits which the legislation seeks to achieve can be readily discerned. Section 25(2) is calculated to:
 - Promote religious tolerance;
 - Prevent demonstrably harmful conduct that causes physical and psychological harm;
 - Prevent the marginalisation of persons on religious grounds and promote the full and equal participation of every person in society;
 - Proscribe conduct that diminishes the dignity of members of the community.
- The legislation reflects an earnest and considered attempt by the legislature to balance or weigh the policies of preventing vilification and allowing appropriate avenues of free speech. On its face, it has sought to ensure that any restriction occasioned by s 25(2) on the freedom of expression would be limited only to the extent necessary to prevent that harm (serious vilification), and to achieve those social benefits. In that sense the legislature has strived to tailor s 25(2) to its purpose. I accept the arguments advanced by both the respondent and by the Attorney that the relevant legislative context and Parliamentary Debate reflects that much consideration was given to 'freedom of expression' and 'freedom of speech' before the enactment of the RRT Act.
- The field of operation of s 25(2) is narrow, it being directed only towards the most extreme, obnoxious and intentional forms of vilifying conduct.⁵²

68. We oppose any further extension of offences of vilification beyond our submission to the Freedom Inquiry.

69. We have also opposed measures to criminalise flag burning, as it should be noted did former Prime Minister the Hon John Howard OM AC SSI.⁵³ Such measures are ineffective, fail to engender respect for the flag and disproportionately burden political communication.

70. We also oppose laws that would seek to ban symbols and insignia associated with terrorism:

- First, while we understand that viewing such symbols causes hurt to affected persons and communities, any such laws are highly likely to be ineffective. The experience of far-right organisations shows the use of far-right icons (such as

⁵² At [64].

⁵³ See our submission on the Upholding Australian Values (Protecting Our Flags) Bill 2015 (Vic) <<https://libertyvictoria.org.au/sites/default/files/Liberty-Victoria-2016-comment-Upholding-Australian-Values-Protecting-Our-Flags-Bill-2015.pdf>>. See Michael Stanton, "Prohibiting Flag Burning Will See Our Values Go Up In Flames", Huffington Post, 9 March 2016, <https://www.huffingtonpost.com.au/michael-stanton/prohibiting-flag-burning-_b_9413362.html>.

the Swastika) can easily be adapted and modified to be highly suggestive of the prohibited icon but not violate prohibition (consider, for example the use of other Fascist and Norse icons by far-right groups). The Swastika itself is a Hindu image (still regularly used in Hindu countries) symbolising the sun, prosperity and good luck. Further, as demonstrated by far-right 'meme' culture online, such icons constantly evolve and often involve initially benign icons (such as 'Pepe the Frog' or even the 'okay' symbol) or religious iconography (such as of crusaders and saints).⁵⁴ Simply put, prohibition is a blunt instrument that will not prevent signals and 'dog-whistling' being given to extremist groups.

- Secondly, such laws are likely to be tested by potential extremists who may seek to portray themselves as 'martyrs' committed to free expression, and prohibition and censorship might well have the perverse outcome of generating more attention towards such persons (and indeed the icons themselves) through lengthy litigation; and
- Thirdly, if persons are willing to display extremist icons in public (be it the Swastika or ISIS flag), this may be a relevant matter for police and intelligence services. Pushing such icons underground does not assist when seeking to recognise the public face of extremist ideologies. Unfortunately, as a society we must accept that these ideologies exist in our community; prohibiting the display of particular symbols and insignia is a band-aid solution that fails to address the root cause of the problem. Of course, if such icons are displayed as part of advocating for the doing of a terrorist act, that is already a criminal offence contrary to s 80.2C of the *Code*.

The Role of Social Media, Encrypted Communications Platforms and the Dark Web in Allowing Extremists to Communicate and Organise

71. It must be noted that police and security services have an extensive range of surveillance capabilities and methodologies, many of which are protected from disclosure to the public by public interest or 'matter of state' immunity.

⁵⁴ Am, Ari Ben, and Gabriel Weimann. "Fabricated Martyrs: The Warrior-Saint Icons of Far-Right Terrorism." *Perspectives on Terrorism* 14, no. 5 (October 2020): 130–47.

72. Great care must be taken before concluding that such powers are inadequate. As demonstrated by successful terrorism prosecutions, law enforcement organisations have extensive and far-reaching powers at their disposal.
73. Encrypted communications platforms and the ‘dark web’ are regularly used for legitimate purposes in order to preserve privacy. As regulation and surveillance of these spaces grows, new unregulated spaces will emerge.
74. In this regard, we refer to and adopt the Queensland Council for Civil Liberties and Liberty Victoria’s recent submission to the Commonwealth Parliamentary Joint Committee on Intelligence and Security on the Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020 (Cth). As was stated in that submission:
- [T]he Bill introduces powers for State-authorized hacking (also known as: lawful hacking, government hacking, computer network operations, network exploitative techniques). It is our position that Australia does not have an adequate federal human rights framework. Therefore, should the Bill come into force, Australians do not have sufficient safeguards of their fundamental rights to protect them from abuse of power by authorities.
75. In short, with ever-expanding surveillance powers comes the ever-increasing risk of abuses of power, made more acute by the absence of any meaningful and protective national human rights framework. Truly independent judicial oversight of any surveillance powers must be fundamental. We would urge the Committee, before concluding that more powers are necessary, to be fully informed about existing capabilities.

Conclusion – The Need to Reinforce Social Cohesion

76. There is an alternative approach to prevention which involves being more proactive than reactive (chasing new ideologies as they emerge). This involves proactively engaging in building tolerance, mutual respect and forming a cohesive Australian identity. It also requires listening to people who are sympathetic to extremist views and seeking to understand their purported grievances. Acknowledging and addressing these grievances (or perceived grievances) is vital. Refusing to engage will not make the problem go away.
77. Being proactive can begin by examining what is common across all forms of extremism – mistrust of government; hyper-conservative ideals of masculinity and gender norms; (perceived) individual or group injustice; ‘us’ vs ‘them’ mentality; and anxiety about the future.

78. Preventing radicalisation to violence (behavioral radicalisation) is effectively impossible as experts have failed (for decades) to be able to deliver an accurate terrorist profile. As a result, the focus of prevention policy has shifted to preventing radicalisation to extremism (cognitive radicalisation). This is challenging because it is impossible to define extremism without defining a restrictive norm. Censorship and proscription of 'extremist ideas' impedes the rights of people to have views that diverge from what is considered 'normal'.
79. Even if successful, disrupting and deterring extremist speech does not address the underlying issues that draw people towards extremist ideas – lack of trust in government and official channels of communication. People are susceptible to believe what they read on extremist social media and websites when they do not trust other sources of information. In that regard, building trust in government is fundamental.
80. Trying to address this issue by banning representations in social media is futile. Police and security services will be forever reactive. The key to addressing this problem is being proactive. And this requires sincere reflection on the historical, societal and structural issues that have allowed for this landscape of extremism and polarisation to flourish.
81. This problem is not about poverty or social opportunities. The problem is about identity and trust. Political rhetoric is also responsible for eroding cohesive identity and trust over the last two decades.
82. The problem of extremism should not be conceptualised as something that happens 'over there' outside the norm. It is very much a product of the norm, a part and parcel of the society we live in and the structures and systems we participate in each day. Extremism is a symptom that something in society is not right. It is not the illness itself. Finding ways to silence right-wing extremism or Islamist extremism will not cure the problem, it will mask it until a new form of extremism arises.

Thank you for the opportunity to make this submission with regard to the important work being undertaken by the Inquiry.

We would welcome the opportunity to give evidence before the Committee.

If you have any questions regarding this submission, please do not hesitate to contact Dr Reem Sweid – Founder and Past President of Muslim Collective, Julia Kretzenbacher – President of Liberty Victoria, Michael Stanton – Policy Committee of Liberty Victoria, or the Liberty Victoria office on 9670 6422 or info@libertyvictoria.org.au.