



Victorian Council for Civil Liberties Inc  
Reg No: A0026497L  
GPO Box 3161  
Melbourne, VIC 3001  
t 03 9670 6422  
info@libertyvictoria.org.au

PRESIDENT

Julia Kretzenbacher

SENIOR VICE-PRESIDENT

Sam Norton

VICE-PRESIDENTS

Jamie Gardiner OAM

Thomas Kane

Monique Mann

IMMEDIATE PAST PRESIDENT

Julian Burnside AO QC

TREASURER

Michelle Bennett

SECRETARY

Martin Radzaj

PATRON

The Hon. Michael Kirby AC CMG

## **Comment on the Terrorism (Community Protection) Amendment Bill 2021**

1. Liberty Victoria provides the below comment on the Terrorism (Community Protection) Amendment Bill 2021 ("the Bill"). We set out below a number of serious concerns that we hold in relation to the Bill and we urge parliament not to pass the Bill in its current form.
2. While the objectives<sup>1</sup> of the Bill in seeking to increase engagement in the community and to enhance community safety are laudable, the manner in which they are sought to be achieved is inapt and the proposals go well beyond what is required to meet those objectives.

### ***Concerns about the Bill***

3. We hold concerns that this scheme will lead to an increase in mistrust among certain sectors of the community and that it is open to significant abuses of power.
4. We will focus our concerns on two key areas:
  - (1) Eligibility for the scheme and manner of persons being entered into the scheme; and

---

<sup>1</sup> See s 22A.

- (2) Intrusion of freedom of association, privacy and information sharing.
5. It should not be thought that we endorse aspects of the Bill that we have not commented on – we are seeking to provide a comment on the most problematic aspects of the Bill.
  6. As referred to below the scheme has the appearance of collaboration – however in reality its structure is such that it is geared towards the making (and granting) of applications for persons who have not been found to have committed any crime to be placed on orders with restrictive conditions which must be complied with in order to avoid criminal sanction. It is the view of Liberty Victoria that such a scheme is an unjustified intrusion on the rights of individuals to freedom of association, personal autonomy and privacy.

***Eligibility for the scheme and manner of persons being selected***

7. Liberty Victoria holds very serious concerns as to the breadth of the criteria for a person to become a ‘prospective participant’ or a ‘participant’. The Bill targets persons who may be ‘radicalising towards violent extremism.’<sup>2</sup> The definitions of what is captured include:

*A behaviour engaged in with any of the following intentions may, in certain circumstances, indicate that the person engaging in that behaviour is **radicalising towards violent extremism** –*

*(a) The intention of advancing a political, religious or ideological cause...<sup>3</sup>*

8. First, there is no definition of what ‘in certain circumstances’ means. As a result the potential for misuse of this definition is obvious.
9. Secondly, s 22AG(3)(a) above may be interpreted so broadly as to capture conduct engaged in by a large number of people within the community, even where this is no identification of any particular act, where they have not done any act in preparation, committed any offence, or had possession any item or thing that could be connected for the preparation of a particular act. This will mean that the Act will capture individuals where there is little or no risk of them in fact radicalising towards extremism, without intervention.

---

<sup>2</sup> See s 22AF.

<sup>3</sup> See s 22AG(3) – the balance of the definition there set out is consistent with the accepted concepts of extremism.

10. Liberty Victoria this year wrote a joint submission with Muslim Collective to the [Commonwealth Parliamentary Joint Committee on Intelligence and Security \(PJCS\)](#). In that submission, we wrote at [27]–[31] (citations in original):

*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.<sup>4</sup> There is no empirically robust method to identify who these individuals will be.<sup>5</sup>
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.<sup>6</sup>
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’).<sup>7</sup> 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.<sup>8</sup>
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) extremism. However, almost all experts agree that the transition to violence is not linear or predictable.<sup>9</sup>
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.<sup>10</sup>

---

<sup>4</sup> 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>.

<sup>5</sup> 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>.

<sup>6</sup> 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.”

<sup>7</sup> 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>.

<sup>8</sup> 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>.

<sup>9</sup> Borum, “Radicalization into Violent Extremism I: A Review of Social Science Theories.”

<sup>10</sup> 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–

11. Many of the other matters raised within that submission to the PJCIS are also relevant to this Bill.
12. Because of these known difficulties in properly assessing and predicting a risk of violence, there is a high likelihood that individuals will be placed on a scheme even where there is little or no actual risk of them radicalising or committing acts of violence.
13. The process for a person to ultimately be placed on an order is also deeply problematic. The Bill speaks of voluntary engagement and has the patina of a collaborative and supportive approach by law enforcement. However, it is clear that once a person is asked to participate, the move from that point to an order being made (which would involve a fundamental restriction of liberty) is almost inexorable.
14. If a person is referred by the Chief Commissioner of Police for voluntary case management<sup>11</sup> and they refuse on the basis that they do not consider themselves to be at risk of any radicalisation and because such a request is an affront to their personal autonomy, then that refusal to provide 'informed consent' must be recorded by the Secretary.<sup>12</sup> The refusal then expressly forms part of the basis upon which an application for an order is made.<sup>13</sup>
15. It is important to reiterate that there is no need for the person to have committed any criminal offence, nor to have possessed any thing in connection to violent extremism, nor identified or even considered a particular act.<sup>14</sup> The bare fact of a refusal not to participate will form part of the basis upon which an application is made — this undermines any argument that the case management is in fact 'voluntary', because the consequences of a refusal of participating will likely be adverse to the individual.
16. There is a real risk that targeting individuals in this way will in fact have the opposite effect and may make the individual feel alienated and persecuted, which may then compound any previous low risk of them radicalising.
17. As we wrote in our submission to PJCIS at [37]:

---

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>.

<sup>11</sup> See s 22BH.

<sup>12</sup> See s 22BP.

<sup>13</sup> See ss 22CL and 22CO(3).

<sup>14</sup> See s 22AG(2).

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.

18. Once an order is made (which involves a finding only on the balance of probabilities) a person is subject to conditions (discussed further below) and liable to a criminal offence for non-compliance.<sup>15</sup> The scheme is, at its heart, a punitive scheme, both in respect of the restrictions placed on and requirements made by an order and the consequences of a breach, which could be minor and not increase any risk of radicalisation.
19. The basis for the making of an order as set out in s 22CO(3) is of genuine concern and illustrates the underlying approach of the scheme is to put the onus on the affected person – who is a member of the public not charged with any criminal offence – and to factor in a measure of 'adverse impact' to the person as being justified.
20. As indicated above, the issue of informed consent (including withdrawal of informed consent at any stage during the voluntary case management process) is expressly relevant to the making of an order.
21. In addition, a court is to consider "whether the order is likely to have a *significant adverse impact* on the respondent"<sup>16</sup> (our emphasis added). Not only does this mean that there can be an adverse impact on the respondent which is acceptable, but it illustrates the starting position for the scheme – which appears to be "what's the harm in making them do an order if there is some risk of radicalisation". At the risk of repetition this cannot be an appropriate, proportionate or necessary way to approach the restriction of a citizen's liberty and cannot be consistent with the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

### ***Intrusion of freedom of association, privacy and information sharing***

22. In the course of the voluntary case management process, substantial personal information would be obtained by law enforcement authorities. We will however focus our comments on the intrusions implicit in any order (noting that voluntary case management is only voluntary in the sense that a person opts in — if they opt out there are consequences<sup>17</sup> and the prospect of an order being sought and made are high).

---

<sup>15</sup> See s 22CU.

<sup>16</sup> See s 22CO(3)(f).

<sup>17</sup> See s 22BO (2)(f).

23. As part of any order the court may attach conditions<sup>18</sup> including that the respondent notify police, specified person or class of specified person of:
- (a) any plan to travel;
  - (b) their phone number;
  - (c) their address; and
  - (d) other contact details.
24. The intrusion of privacy is significant and unjustified. The significance of it is increased when regard is had to the information sharing provisions which enable all information obtained throughout the process to be shared widely without the consent of the person to various agencies without their knowledge. Section 22EH sets out the objects of Division 6 – Information Sharing. They are broad and encompass a variety of agencies to whom information may be provided.
25. The scope of the information to be shared includes;
- (a) health information;
  - (b) child protection information;
  - (c) school records;
  - (d) criminal records;
  - (e) mental health information; and
  - (f) sensitive information (as defined in the *Privacy and Data Protection Act 2014*).
26. On any view that is a wide array of personal information which can be gathered during the process and shared with agencies the affected person has no idea about nor connection with. We repeat that persons subject to such intrusions will include persons with no criminal history and who have not even contemplated doing any act.
27. It is the view of Liberty Victoria that this is an outrageous and serious affront to the right of a person not to have their 'privacy, family, home, or correspondence unlawfully or arbitrarily interfered with.'<sup>19</sup> It is unjustifiable and should not be made law.

---

<sup>18</sup> See s 22CR.

<sup>19</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 13.

28. An order may also include a condition that the person must not contact a specified person or a person of a specified class.<sup>20</sup> This is a significant infringement of the right to freedom of association<sup>21</sup> particularly when cast in terms of a 'specified class'. Not only is this an unjustified infringement of liberty, it runs the risk of further alienation and isolation – which in turn can jeopardise the safety of the community.

### **Conclusion**

29. The Bill should not be passed. Not only would it result in unjustified infringement of human rights, it will not achieve its stated objectives and risks alienation of targeted persons and sectors of the community.

---

<sup>20</sup> See s 22CR (3)(d).

<sup>21</sup> *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 16.