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Dear Mr Blight

Executive Council of Australian Jewry's submission to Defining Terrorism – Review of the definition of a 'terrorist act' in section 100.1 of *The Criminal Code Act 1995* (Cth)

Thank you for the opportunity to make a submission to the Independent National Security Legislation Monitor (**the Monitor**) about the definition of a 'terrorist act' in section 100.1 of the *Criminal Code Act 1995* (Cth) (**Criminal Code**).

For more than eighty years, the Executive Council of Australian Jewry (**the ECAJ**) has been the peak, elected, representative body of the Australian Jewish community. The ECAJ's constituent organisations are the roof bodies of the Jewish community in each State and Territory.¹ Other Jewish organisations which operate nationally are Affiliates of the ECAJ.² Altogether, the ECAJ's constituent and affiliated organisations, and their respective constituent and affiliated organisations, number approximately 200 major Jewish organisations across Australia, and have a range of security needs that are responsive to the growing and diffuse nature of terrorism and hate crime.

Executive Summary

The ECAJ supports retention of the current definition of terrorism, with limited clarifying refinements. The definition remains fit for purpose in a rapidly evolving threat environment characterised by hybrid, ideological, political and religiously motivated violence. It is the ECAJ's

¹ Namely, the NSW Jewish Board of Deputies, the Jewish Community Council of Victoria Inc, the Jewish Community Council of Western Australia Inc, the Queensland Jewish Board of Deputies, the Jewish Community Council of South Australia, the Hobart Hebrew Congregation, the ACT Jewish Community Inc and the Northern Territory Jewish Community Association.

² Namely, Australasian Union of Jewish Students, Union for Progressive Judaism, Australian Federation of WIZO, Maccabi Australia Inc, National Council of Jewish Women of Australia, B'nai B'rith District 21 of Australia and New Zealand, Jewish National Fund of Australia Inc, Joint Distribution Committee Australia.

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Council of Orthodox Synagogues
of Australia

position that without a definition that recognises the special legal category that terrorism currently occupies and ought to occupy – a category that recognises that terrorism challenges the very nature and existence of our society³ - the meaning of ‘terrorist act’ will be blurred, and counter-terrorism measures that lose sight of this critical distinction will be rendered less effective. This, in our view, would be harmful to protecting and preserving a peaceful democratic society in Australia, because terrorism is “the most direct asymmetric threat” to the security of individuals and democratic societies generally, and to international peace.⁴ Dismantling the specific conceptual framework that has been developed internationally in relation to terrorism would thus make liberal-democratic societies based on the rule of law more vulnerable to acts of terrorism.

Recent developments that sought to terrorise the Australian Jewish community, include the December 2024 arson attack against the Adass Israel Synagogue in Melbourne and the October 2024 arson attack against a kosher food establishment in Sydney, both of which were assessed by the Australian Security Intelligence Organisation (ASIO) to have been orchestrated by the Iranian regime. These examples demonstrate that terrorism, unlike all other crimes proscribed under Australian domestic law, is capable of amounting to an act of aggression under international law⁵, which threatens international peace and security. It was for this reason that the Australian government expelled the Iranian ambassador to Australia and announced that it would legislate to proscribe the Islamic Revolutionary Guard Corps.⁶

Violent behaviour motivated by extremist religious world views which may involve the targeting of religious and ethnic groups also remains an enduring and an escalating threat not only to the personal safety of citizens but also to social cohesion. Of the 83 sentencing decisions and appeals for persons convicted of terrorism offences under section 80.2C and Divisions 101–103 of the Commonwealth *Criminal Code* from 2002 to 2024, 78 were cases where perpetrators were religiously motivated, and were motivated by Islamic fundamentalism.⁷ Of the remaining cases, four involved perpetrators motivated by white supremacism or right-wing extremism, which was ideologically based; and one involved an ideologically and politically motivated perpetrator.⁸ That is to say, that in all but one case, the perpetrators were motivated by extremist religious or ideological frameworks that are infused with antisemitism.

Weakening the definition by removing ideological, political or religious motives; excluding “sections of the public,” or omitting terrorist threats from the definition of a terrorist act would erode the legal foundations of Australia’s counter-terrorism framework and leave vulnerable communities exposed.

³ *The United Kingdom’s Strategy for Countering Terrorism*, Cm 9608 (June 2018), Home Secretary, Foreword: https://assets.publishing.service.gov.uk/media/5b23df8f0b634d557b020/140618_CCS207_CCS0218929798-1_CONTEST_3.0_WEB.pdf

⁴ ‘Countering terrorism’, NATO, 6 August 2025, available at: [NATO - Topic: Countering terrorism](#).

⁵ The Hon Anthony Albanese MP, Prime Minister of Australia, *Australian government announcement on the involvement of Iranian regime in antisemitic firebombing incidents*, Media conference, 26 August 2025: <https://www.pm.gov.au/media/press-conference-parliament-house-canberra-38>.

⁶ *Ibid.*

⁷ Spreadsheet of relevant terrorism sentencing cases, *Independent National Security Legislation Monitor*, available at: [spreadsheet_of_relevant_terrorism_sentencing_cases.xlsx](#).

⁸ *Ibid.*

The current definition aligns with international law, the approach of allied jurisdictions, and Australia's obligations under several United Nations Security Council Resolutions including resolutions 1373⁹ and 2178¹⁰. This submission recommends:

- retaining political, ideological, and religious motives, but amending part 1(b) of the 'terrorist act' definition such that the action is done or the threat is made *either* with the intention of advancing a political, religious or ideological cause, *or* in pursuance of a political, religious or ideological cause;
- preserving threats and preparatory conduct in the definition of a 'terrorist act';
- maintaining the reference to "a section of the public";
- recognising psychological harm;
- expressly including hostage-taking in the list of specific harms; and
- introducing a narrowly defined terrorism deception or ruse offence to address serious fabrications that cause widespread fear and resource diversion.

Introduction: The Australian Jewish community's unique and sustained experience of domestic terrorism

Perhaps more than any other community in Australia, the Australian Jewish community has faced a long history of sustained terrorist threat. This has included significant violent and life-threatening incidents and serious damage to property, including the 23 December 1982 bombings of the Israeli Consulate and Hakoah Club in Sydney, which the Coroner's Court of NSW found in December 2022 "were an act of international terrorism".¹¹ From January to March 1991, during the Gulf War, there were a series of arson attacks on Jewish institutions in Sydney. Five Sydney synagogues were targeted, including a kindergarten attached to one of them, and four were damaged substantially. One of the five attacks was thwarted by a security guard who sustained injuries as a result. No prosecutions occurred. Then, in August and November 1993, firebombings occurred at the Allawah Synagogue and Newtown Synagogue¹² respectively, both coinciding with particular anniversaries of significance to the Jewish community.¹³ In January 1995, the Adass Israel congregation in Melbourne suffered an arson attack, which left the building heavily damaged and the community traumatised.¹⁴ Damage to property was estimated

⁹ United Nations Security Council Resolution 1373, Creation of Counter-Terrorism Committee, 28 September 2001, available at: [http://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F1373\(2001\)&Language=E&DeviceType=Desktop&LangRequested=False](http://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F1373(2001)&Language=E&DeviceType=Desktop&LangRequested=False)

¹⁰ United Nations Security Council Resolution 2178, Addressing the growing issue of foreign terrorist fighters, 24 September 2019, available at: [https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2178\(2019\)&Language=E&DeviceType=Desktop&LangRequested=False](https://undocs.org/Home/Mobile?FinalSymbol=S%2FRES%2F2178(2019)&Language=E&DeviceType=Desktop&LangRequested=False)

¹¹ Explosions Inquiry, Coroners Court of NSW, 23 December 2022, available at: https://assets.publishing.service.gov.uk/media/6059ea0ad3bf7f2f0cd61d00/THE_TERRORISM_ACTS_IN_2019_REPORT_Accessible.pdf

¹² 'Extensive damage caused by arson to Sydney shul on Kristallnacht', Jewish Telegraphic Agency, 15 November 1993, available at: <https://www.jta.org/archive/extensive-damage-caused-by-arson-to-sydney-shul-on-kristallnacht>

¹³ The Allawah Synagogue had just celebrated its fiftieth anniversary the day prior, while the Newtown Synagogue was attacked on the anniversary of Kristallnacht.

¹⁴ World Report: Australian Synagogue Damaged by Arson, Emanuel Jewish Community Bulletin, January 1995, held at the National Library of Israel, available at: <https://www.nli.org.il/he/newspapers/?a=d&d=jweekly19950113.2.47>

to be in excess of \$200,000 at the time.¹⁵ Against this backdrop of violent arson attacks there were ongoing acts of vandalism, thefts, and graffiti attacks on Jewish sites, as documented by successive Antisemitism Reports by the ECAJ.

More recently, in late 2024 and early 2025, there were a series of high-profile antisemitic incidents in New South Wales and Victoria, in addition to those already mentioned. These included the destruction of a child-care centre by fire, the attack and fire on property outside the ECAJ's co-CEO's former home, and what seemed to be an attempted destruction of Newtown synagogue by fire.¹⁶ However, to date, to the ECAJ's knowledge, no terrorism charges have been brought against the perpetrators of these attacks. Rather, the declaration by ASIO that two of the attacks were terrorist incidents is a declaration of investigative status and may not result in any prosecution for terrorism offences. This demonstrates that concerns about the definition of terrorism being too wide are misplaced. Any decision by authorities to prosecute or not prosecute alleged perpetrators for terrorism offences is a pragmatic one having regard to the evidence and is made with extreme caution. Indeed, there have been only 85 terrorism sentencing cases under section 80.2C and Divisions 101–103 of the Commonwealth *Criminal Code* since these provisions were introduced in 2002, which suggests that convictions for terrorism offences are rare.¹⁷

1. Threat Environment and Fitness of the Definition

Australia's threat landscape has become more diverse and diffuse since 2023. This trend towards a diversity of threat sources has been emerging for several years¹⁸ and was evidenced in ASIO's earlier references to 'standalone, unilateral attacks by individuals and small independent groups'.¹⁹ The same trend has manifested in other jurisdictions and has had a similar impact upon their Jewish communities. For example, in Boulder, Colorado, a man not previously known to law enforcement used a makeshift flamethrower to attack Jewish attendees at a rally in support of Israeli hostages.²⁰ In Washington DC, two Israeli embassy workers were murdered on the street by a gunman who had no prior criminal record and who authorities had no reason to monitor.²¹ Most recently, two members of Manchester's Heaton Park Hebrew Congregation Jewish community were killed in an attack by a perpetrator who may have been

¹⁵ *Ibid.*

¹⁶ See, e.g. SMH, '<https://www.smh.com.au/national/nsw/nine-arrests-and-more-than-a-dozen-attacks-the-scourge-of-antisemitism-shocking-sydney-20250122-p5l6er.html>' (22 January 2025, updated 29 January 2025).

¹⁷ Spreadsheet of relevant terrorism sentencing cases, *Independent National Security Legislation Monitor*, available at: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.inslm.gov.au%2Fsystem%2Ffiles%2F2025-08%2Fspreadsheet_of_relevant_terrorism_sentencing_cases.xlsx&wdOrigin=BROWSELINK.

¹⁸ Hardy, Keiran; Ananian-Welsh, Rebecca; Tulich, Tamara; and Dalla-Pozza Dominique, 'Australia's legal definition of terrorism: United Nations and Five Eyes Comparison', 11 August 2025, available at: https://www.inslm.gov.au/system/files/2025-08/united_nations_and_five_eyes_comparison.pdf, see pp. 2.

¹⁹ ASIO, *ASIO Report to Parliament 2011–12* (Annual Report, 10 October 2012) 3. See also ASIO, *ASIO Report to Parliament 2012–13* (Annual Report, 31 October 2013) 2; ASIO, *ASIO Report to Parliament 2013–14* (Annual Report, 12 September 2014) 4.

²⁰ Hampton, Deon J; Chuck, Elizabeth; Victoria Lozano, Alicia; Siemaszko, Corky, 'Lone wolf attacks in Boulder and DC highlight the difficulty in securing public spaces', NBC News, 23 June 2025, available at: <https://www.nbcnews.com/news/us-news/lone-wolf-attacks-boulder-dc-highlight-difficulties-securing-public-sp-rcna210369>.

²¹ Schapiro, Rich; Reilly, Ryan J; and Goggin, Ben, 'Jewish museum killings show how hard it is to stop radicalized lone wolf attacks', NBC News, 23 May 2025, available at: <https://www.nbcnews.com/politics/justice-department/jewish-museum-killings-show-hard-stop-radicalized-lone-wolf-attacks-rcna208656>.

influenced by extreme Islamist ideology²², but who was not known to counter-terrorism police prior to the incident.²³ There is a growing range of ideologies and extremist interpretations of religions that can be readily accessed by individuals and which have been termed ‘novel cause terrorism’²⁴, and this in turn is linked to the more diffuse way that ideologies, political causes, and religious causes are disseminated and their rapid evolution in the online space.

ASIO’s 2025 Threat Assessment describes a security environment marked by “multifaceted, merging and cascading threats,” fuelled by the spread of extremist ideologies and accelerated radicalisation online.²⁵ As the recent spate of antisemitic attacks in Australia has demonstrated, the convergence of domestic extremism, geopolitical conflict (for example, the Israel Hamas war) and digital disinformation has increased the potential for ideologically, politically and religiously driven violence, including attacks on minority communities. As Human Rights Commissioner Lorraine Finlay noted in an opinion piece in August 2023:

“Misinformation and disinformation can have devastating effects on human rights, social cohesion and democratic processes.”²⁶

Invariably, minority groups including the Jewish community are more likely to be exposed to serious harm by way of terrorist acts as a result of misinformation or disinformation and other forms of misconduct on digital services, given that digital services’ “incentives pull heavily toward ingroup solidarity and outgroup derogation”.²⁷ In an online environment that commercially incentivises radical and extremist content, and funnels users away from perspectives that differ from their own, there is a greater propensity for users to be primed to offend by terrorist motivations.²⁸ It is for this reason that organisations such as the ECAJ and Digital Defence have sought complementary reforms to the *Online Safety Act*, including reforms to address online terrorism-promoting material.

ASIO Director-General, Mike Burgess, explicitly recognised the evolving threat environment and the specific risks it poses to the Australian Jewish community in the 2025 annual threat assessment, and again during a Senate Estimates hearing on 25 February 2025, when he stated:

²² ‘Manchester synagogue attacker was on bail after rape arrest, police say’, *BBC News*, 3 October 2025, available at: <https://www.bbc.com/news/live/cx2703lnww4t>.

²³ Halliday, Josh, ‘Wife of synagogue attacker says he showed no signs of extremism’, *The Guardian*, 9 October 2025, available at: <https://www.theguardian.com/uk-news/2025/oct/09/wife-manchester-synagogue-terrorist-jihad-al-shamie-says-showed-no-signs-extremism>.

²⁴ Jonathan Hall KC, ‘The Terrorism Acts in 2019, Report of the Independent Reviewer of Terrorism legislation in the operation of the Terrorism Acts 2000 and 2006’, March 2021, available at: https://assets.publishing.service.gov.uk/media/6059ea0ad3bf7f2f0cd61d00/THE_TERRORISM_ACTS_IN_2019_REPORT_Accessible.pdf, pp 15.

²⁵ Director General’s Annual Threat Assessment 2025, 19 February 2025, available at: <https://www.asio.gov.au/director-generals-annual-threat-assessment-2025>.

²⁶ <https://humanrights.gov.au/about/news/opinions/why-misinformation-bill-risks-freedoms-it-aims-protect>.

²⁷ Fisher, Max, ‘Belonging is stronger than facts: the age of misinformation’, *The New York Times*, 7 May 2021: <https://www.nytimes.com/2021/05/07/world/asia/misinformation-disinformation-fake-news.html>.

²⁸ The *National Inquiry into Racist Violence* conducted by the Human Rights and Equal Opportunity Commission (the predecessor of the present Australian Human Rights commission) in 1991, concluded that “the evidence presented to the Inquiry also supports the observation that there is a connection between inflammatory words and violent action”: Human Rights and Equal Opportunity Commission, *Report of National Inquiry into Racist Violence in Australia* (1991), p. 144: <http://www.humanrights.gov.au/publications/racist-violence-1991> (viewed 17 August 2014).

“In terms of threats to life, [antisemitism is] my agency’s number one priority because of the weight of incidents we’re seeing play out in this country.

I don’t believe we’ve done that in our history, certainly not in my six years as director general... It’s the volume of incidents that we are dealing with.”²⁹

This challenging environment with unpredictable actors, a proliferation of disinformation and misinformation, a rapid expansion in online technologies and their reach, and novel and evolving terrorist ideologies, necessitates a clear definition of a ‘terrorist act’ that encompasses not only distinct religious, political and ideological motivations but also hybrids of them. The transnational nature of the threat warrants an approach that is as close as possible to a uniform approach with allied nations. Removing the motive or purpose limbs of the ‘terrorist act’ definition, or blurring them into a ‘one-size-fits-all’ motive or purpose would hinder the capacity of ASIO and the Australian Federal Police to draw links between individuals and groups which share distinct forms of motivation and also to distinguish terrorism from other forms of politically motivated or hate-based violence.

2. The “Terrorist Purpose” Requirement

The “purpose” limb — intentionally coercing or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or intimidating the public or a section of the public — remains essential.³⁰ The phrase “a section of the public” ensures that attacks with a ‘terrorist motive’ (see section 3 and Executive Summary) directed against specific communities, such as the Jewish, Indigenous, Sikh, Hindu, LGBTQI+ or Muslim communities, are correctly recognised as terrorism rather than generic hate crimes. The term has proven to be judicially workable, as seen in *R v Chaarani & Ors*, which confirmed that a religious community constitutes a “section of the public.”

The need to retain the ‘terrorist purpose’ requirement is illustrated through recent examples such as the arson attack at the Adass Israel Synagogue in December 2024, which has subsequently been attributed to Iran’s Islamic Revolutionary Guard Corps³¹. The Victoria Police Chief Commissioner Patton acknowledged this in his statement explaining why the police had declared the attack a suspected act of terror:

“When you have a crime like this that strikes at the fabric of the community, that is very, very concerning to us.”³²

²⁹ Moore, Hannah, ‘ASIO boss Mike Burgess declares antisemitism agency’s top priority in terms of threats to life’, *News.com.au*, 26 February 2025, available at: <https://www.news.com.au/national/politics/asio-boss-mike-burgess-declares-antisemitism-agencys-top-priority-in-terms-of-threats-to-life/news-story/f3587554ecbeb9f36e4759976fa0b997>.

³⁰ The OHCHR Guidance note ‘Defining ‘terrorism’ in national criminal legislation.

³¹ Senator Penny Wong, ‘Response to Iranian attacks’, *Ministry for Foreign Affairs*, 26 August 2025, available at: <https://www.foreignminister.gov.au/minister/penny-wong/media-release/response-iranian-attacks>.

³² ‘Melbourne Adass Israel Synagogue fire being treated as terror attack, authorities confirm’, *ABC*, 9 December 2024, available at: <https://www.abc.net.au/news/2024-12-09/melbourne-synagogue-fire-adass-israel-police-investigate/104700618>.

Removing this phrase would mean that ideologically, politically or religiously motivated attacks against communal institutions or leaders could no longer be prosecuted as terrorism, contradicting both domestic and international standards. Even if the prosecution ultimately does not elect to charge the perpetrators with a terrorism offence, the investigative powers available when there is a suspected terrorist act enable Australian Government agencies to assist and utilise: intelligence-sharing networks, additional powers and capabilities, and certain advanced cyber-warrants, all of which may support the collection of time-sensitive intelligence. For example, in the recent spate of antisemitic attacks in late 2024 and early 2025, when law enforcement was trying to determine whether the attacks were linked, and to foil potential further attacks, having the ‘terrorist purpose’ requirement embedded in the ‘terrorist act’ definition would have meant that it could more rapidly and effectively investigate the crimes in question.

We note that inclusion of a ‘terrorist purpose’ in the definition of a ‘terrorist act’ aligns with international approaches to counterterrorism, and is ‘accepted as necessary, or at least best practice, in order to ensure that terrorism laws do not have a disproportionate effect on human rights’.³³ The UN’s Office of the High Commissioner of Human Rights states in principle 5 in its Guidance Note that:

‘the terrorist purpose should be to provoke a state of terror in the general public or in a group of persons or particular persons (or alternatively, to intimidate a population) or compel a government or an international organization to do or to abstain from doing any act. The purpose element is essential to distinguishing terrorism from other serious violent crimes, such as organized crime.’³⁴

At the time when the terrorist purpose element was included at the recommendation of the Senate Legal and Constitutional Legislation Committee (the Committee), the Committee noted that this element “*is at the very heart of the nature of terrorism*”.³⁵

While it goes beyond the scope of the ECAJ’s work, we are also of the view that the ‘terrorist purpose’ requirement should explicitly encompass coercion or intimidation of governments and international organisations to ensure extraterritorial reach. For example, in recent times in Australia, Members of Parliament, including our Prime Minister, and their offices, have been targeted in an attempt to intimidate their staff and their constituencies, and the government more broadly, and to deter the government from challenging extremist causes.³⁶ Foreign malign states such as Iran have engaged in state-sponsored terror that has targeted places of significance to the Australian Jewish community in order to intimidate the Jewish community

³³ ‘Defining ‘terrorism’ in national criminal legislation’, OCHCR Guidance Note, 5, 27 March 2025, available at: <https://www.ohchr.org/en/documents/tools-and-resources/guidance-note-defining-terrorism-national-criminal-legislation>.

³⁴ *Ibid.*

³⁵ ‘Defining terrorism: Issues Paper’, INSLM, 2025, available at: <https://www.inslm.gov.au/publications/issues-paper-review-definition-terrorist-act> section-1001-criminal-code-act-1995, pp. 35.

³⁶ ‘Two teens charged with vandalising Labor MP Josh Burns’ Melbourne Office’, *The Guardian*, 26 July 2024, available at: <https://www.theguardian.com/australia-news/article/2024/jul/26/josh-burns-labor-office-melbourne-vandalised-teens-charged-ntwnfb>; and Keoghan, Sarah, ‘Malicious damage: PM’s office vandalised with pro-Palestinian messages’, *Sydney Morning Herald*, 6 Dec 2023, available at: <https://www.smh.com.au/national/nsw/malicious-damage-pm-s-office-vandalised-with-pro-palestinian-messages-20231206-p5epnv.html>.

into quiescence and thereby interfere with Australian democracy.³⁷ Some UN offices would also appear to have come under increasing duress to reflect views that show sympathy for terrorist organisations, and, to refrain from condemning or taking action with respect to terrorism.³⁸ Given the transnational nature of the terrorism threat, the inclusion of coercion or intimidation of governments and international organisations within the definition of ‘terrorist purpose’ would be timely and would reflect Security Council resolutions, and be in line with the UK, Canadian and New Zealand definitions of ‘terrorist act’.³⁹

3. The “Terrorist Motive” Requirement

Distinctive nature of terrorism

The motive element —to advance a political, religious or ideological cause — must be retained. It is the key component of what makes terrorism distinct from other types of crimes. Every major allied framework, including the laws of the United Kingdom, Canada, the European Union and New Zealand, retain this element.

Best practice

The UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism has also accepted the inclusion of a terrorist motive as good practice, noting that:

*“The rights to freedom of expression and religion may be limited where necessary and proportionate in pursuit of security, public order or to protect others’ rights.⁴⁰ Limitations may thus be imposed on expression that incites violence or crime, propagandizes for war, or advocates national, racial or religious hatred that incites discrimination, hostility or violence”.*⁴¹

We strongly oppose any suggestion that political, religious and ideological motives can all be subsumed within the rubric of “ideological” motivations. Although religion, politics and ideology can each provide a worldview and moral guidance, the key difference lies in their basis: political aims and ideologies are generally grounded in human reason and logic and can thus change to meet changing realities, whereas religions are expressions of faith and belief in a Higher Power,

³⁷ Senator Penny Wong, ‘Response to Iranian attacks’, *Ministry for Foreign Affairs*, 26 August 2025, available at: <https://www.foreignminister.gov.au/minister/penny-wong/media-release/response-iranian-attacks>.

³⁸ ‘Nine UNRWA staff members ‘may have been involved’ in October 7 attacks’, *France 24*, 5 August 2024, available at: <https://www.france24.com/en/middle-east/20240805-nine-unrwa-staff-members-may-have-been-involved-in-october-7-attacks>.

³⁹ Explanatory Notes to the *Terrorism Act 2006* (UK) [158].

⁴⁰ International Covenant on Civil and Political Rights, arts. 19 (2) and (3) and 18 (1) and (2), respectively.

⁴¹ ‘Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Saul – Best practices to protect human rights while using administrative measures to prevent terrorism: restrictive orders, terrorist listings, security detention and compulsory interventions’, UN OHCHR, A/80/284, 31 July 2025.

whose dictates are immutable. Further, because religion usually claims to be Divinely-mandated, it demands adherence on a ‘whole of life’ basis.⁴²

Motivation is by definition subjective. Any inquiry into the motivation of a person who has committed a terrorist act must therefore focus on what that person subjectively conceived to be the reason for the act, and not on how others, for reasons of their own, may choose to conceive it. Grouping together offenders who share similar or identical subjective motivations for their actions remains an essential tool for intelligence and law enforcement agencies in ascertaining links between offenders, and in devising rehabilitation programs that will address and seek to overcome the true sources of their motivation.

In short, retaining the tripartite reference — political, religious and ideological — ensures that the definition of ‘terrorist act’ is not unduly wide⁴³; does not extend to crimes of a personal, emotional, social or other nature⁴⁴; and that it reflects the actual drivers of terrorism, which are necessarily subjective⁴⁵. The definition assists with diagnosis and also helps ensure that investigative and rehabilitation resources are appropriately focused.⁴⁶

At least five government reviews in Australia, including a parliamentary review and a joint government review, have recommended retaining motive⁴⁷, and that of the two reviews that recommended removing motive, the recommendations were not adopted⁴⁸. We do however recommend that the Monitor consider amending part 1(b) of the ‘terrorist act’ definition such that the action is done or the threat is made *either* with the intention of advancing a political, religious or ideological cause, *or* in pursuance of a political, religious or ideological cause. This would address the rise of ‘mixed motives’ and the growth of lone actors ‘inspired’ by the religious extremism of organisations such as Islamic State, where these lone actors have consumed the materials of the proscribed terrorist organisation online but are nevertheless not affiliated with it.

Diagnosis and response

It is revealing that of the 83 sentencing decisions and appeals for persons convicted of terrorism offences under section 80.2C and Divisions 101–103 of the Commonwealth *Criminal Code* from 2002 to 2024, 78 were cases where perpetrators were religiously motivated, and were motivated

⁴² Henne, Peter, ‘Terrorism and religion, an overview, Oxford Research Encyclopedias, 25 January 2019, available at: <https://doi.org/10.1093/acrefore/9780190228637.013.693>.

⁴³ Martin Scheinin, *Report of the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism: Ten Areas of Best Practices in Countering Terrorism*, UN Doc A/HRC/16/51, 22 December 2010, pp. 27 (‘Scheinin 2010’).

⁴⁴ Jonathan Hall KC, ‘The Terrorism Acts in 2019, Report of the Independent Reviewer of Terrorism legislation in the operation of the Terrorism Acts 2000 and 2006’, March 2021, available at: , https://assets.publishing.service.gov.uk/media/6059ea0ad3bf7f2f0cd61d00/THE_TERRORISM_ACTS_IN_2019_REPORT_Accessible.pdf, pp 29.

⁴⁵ Michael Head, *Crimes Against the State: From Treason to Terrorism*, Ashgate Publishing, 2011, pp. 181.

⁴⁶ Attorney-General (ACT), ‘Statutory Review – Terrorism (Extraordinary Temporary Powers) Act 2006’, *Report*, April 2021, pp. 10.

⁴⁷ *Ibid*, pp. 38.

⁴⁸ 2012 INSLM Review 114 – 116, 119.

by Islamic fundamentalism.⁴⁹ While we acknowledge that there are concerns that having the motive element as part of what constitutes a ‘terrorist act’ means that terrorist acts are broken down along political, ideological and religious motivations, this categorisation reflects their distinctive nature. This does not mean that there is an inherent link between the adherence to any one religion and a propensity to commit acts of terror, but rather that it is objectively the case that extremist interpretations of *any* religion may be used to try to justify action or the threat of action in which meets the definition of a ‘terrorist act’. It is highly unlikely that public perception would shift simply by the removal of motive from the definition. What is more likely is that the public and the media will continue to view such attacks as instances of terrorism, but without a sufficiently focused definition such attacks may be less likely to be properly diagnosed, investigated and prosecuted.

Eliminating motive would collapse terrorism into the general category of undifferentiated violent or serious domestic crime. Attacks like the 9/11 terror attacks in the US, the bombing of the Jewish communal centre in Buenos Aires, Argentina⁵⁰, or the Christchurch massacre in New Zealand would risk not qualifying as terrorism, and, as such, intelligence and law enforcement authorities would no longer be charged expressly to give special attention to acts that seek to change ‘our way of life’ and impose a new social and political order by force on the Australian people that is repugnant to our nation’s freedoms and values.⁵¹ This would be a regressive and dangerous outcome.

While identifying a motive can be complex in the age of hybrid ideologies and lone-actor radicalisation, this challenge does not justify repeal. As the UK Independent Reviewer of Terrorism Legislation, Jonathan Hall KC, concluded in his 2025 report, removing motive would “alter the landscape” and extend intrusive powers beyond their intended reach. Conversely, in *R v Khawaja*, the Ontario Superior Court held that Canada’s motive requirement does not unduly infringe its constitutional Charter right to freedom of expression.⁵² We note that the Issues Paper for this review stated that “it is unclear if there have been any actual cases where the definition of terrorism has inhibited police when responding to critical incidents”⁵³, and, as such, it cannot be substantiated that the tripartite motive element has in any way limited the capabilities of law enforcement in responding to critical incidents.

As the representative body of a community that has frequently suffered from religiously motivated attacks, the ECAJ understands the level of anxiety that arises in response to such attacks being classified as ‘terrorist acts’. We are of the view that such classification should only occur in appropriate circumstances where there is positive evidence that suggests that

⁴⁹ Spreadsheet of relevant terrorism sentencing cases, *Independent National Security Legislation Monitor*, available at: https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.inslm.gov.au%2Fsystem%2Ffiles%2F202508%2Fspreadsheet_of_relevant_terrorism_sentencing_cases.xlsx&wdOrigin=BROWSELINK.

⁵⁰ ‘Remembering the AMIA bombing: A 31-Year struggle for justice’, *American Jewish Committee*, 17 July 2025, available at: <https://www.ajc.org/news/remembering-the-amia-bombing-a-31-year-struggle-for-justice>.

⁵¹ Cm 9608 (June 2018), Home Secretary, Foreword.

⁵² *R v Khawaja* [2012] 3 SCR 555.

⁵³ ‘Defining terrorism: Issues Paper’, INSLM, 2025, available at: <https://www.inslm.gov.au/publications/issues-paper-review-definition-terrorist-act> section-1001-criminal-code-act-1995, pp. 26.

there was a clear motive at play. Removing motive from the definition of ‘terrorist act’, or reducing motive merely to ideology will have the effect of exacerbating public suspicions and anxiety⁵⁴ and reducing public understanding of what constitutes terrorism.

4. Specific Harms

The harm provisions in section 100.1(2) of the Criminal Code are appropriate and should remain broad. Limiting harm to serious physical injury or to “critical infrastructure” would exclude many genuine terrorist methods, including symbolic or communal property attacks that generate, and are intended to generate, widespread fear.

Damage to places of worship, community centres or educational facilities can induce profound terror even absent any casualties. Lord Carlile of Berriew QC recognised this in the UK, affirming that property damage and threats to property can produce “a real sense of terror for the future.”⁵⁵ The Australian Jewish community has experienced this harm directly on many occasions. The incidents described earlier in this submission have sought to terrorise the Australian Jewish community by making it feel that its institutions and leaders are physically vulnerable. The fact that no-one thus far has suffered physical harm has been primarily the result of the Australian Jewish community making very substantial investments in its own security over many years and taking steps to mitigate terrorism risks, but the acts have nevertheless had the potential to cause serious harm or death. To the extent that there are concerns that Australia’s definition of a ‘terrorist act’ goes beyond the Security Council’s characterisation, by covering serious damage to property, the definition already contains an exception in section 100.1(3) for advocacy, protest, dissent and industrial action not intended to cause harm to a person.

This submission also supports inclusion of psychological harm as a component of “serious harm.” This could be addressed by modifying section 100.1(2)(a) so that it refers to ‘serious harm to a person’. The effect of this change would be limited because section 100.1(c) requires that the action must be done or the threat made with the intention of coercing, influencing by intimidation, or intimidating.

Psychological trauma caused by acts or threats of terrorism can be severe, prolonged and functionally equivalent to physical injury.⁵⁶ Including psychological harm aligns with the *Model Criminal Code* and recommendations of prior reviews, including the Sheller Review (2006), the Attorney-General’s Department review (2009), and the Council of Australian Governments’

⁵⁴ Defining terrorism: Issues Paper’, INSLM, 2025, available at: <https://www.inslm.gov.au/publications/issues-paper-review-definition-terrorist-act> section-1001-criminal-code-act-1995, pp. 38. See also Department of Justice and Community Safety (Vic), *Review of the Terrorism (Community Protection) Act 2003*, Stage Two Report, August 2021, pp. 10.

⁵⁵ Lord Carlile of Berriew, *The Definition of Terrorism*, Report of the Independent Reviewer of Terrorism Legislation, March 2007, pp. 31.

⁵⁶ Stith Butler A, Panzer AM, Goldfrank LR, editors, ‘Preparing for the Psychological Consequences of Terrorism: A Public Health Strategy’, National Academies Press (US), 2003; and ‘Understanding the Psychological Consequences of Traumatic Events, Disasters, and Terrorism’, available from: <https://www.ncbi.nlm.nih.gov/books/NBK221638/>.

review (COAG) (2013)⁵⁷. By way of example, the 9 October 2023 rally outside the Sydney Opera House, which included grossly racist and threatening chants, the burning of flares, and damage to property, caused great consternation and feelings of fear for personal and communal safety within the Australian Jewish community.⁵⁸ While an amendment such as the one contemplated may not necessarily have resulted in any charges on such occasion, the effect of such an amendment would have been to enable law enforcement to utilise broader investigative powers, which may well have been appropriate in the circumstances.

Furthermore, hostage-taking should be expressly included in the list of specific harms that may constitute a ‘terrorist act’. Hostage-taking violates non-derogable human rights law because it amounts to an arbitrary deprivation of liberty – and it has the effect of instilling profound fear in society. It has long been recognised as an international crime. The UN Commission on Human Rights has stated that hostage-taking, wherever and by whoever committed, is an illegal act aimed at the destruction of human rights and is never justifiable.⁵⁹ It should be immaterial whether serious physical harm is inflicted on the hostages, given the far-reaching impact on the public or sections of the public caused by hostage-taking. While broadening section 101(2)(a) as suggested above would implicitly recognise psychological harm inflicted on hostages, the explicit inclusion of hostage-taking as a specific offence would signal that Australia agrees with the UN’s description of hostage-taking as ‘a manifestation of international terrorism’.⁶⁰

Lastly, the definition should clarify that bodies corporate may be liable where they facilitate terrorist activity, including through digital or financial means.⁶¹ We can envisage a situation where bodies corporate act as intermediaries for malign state and non-state actors, who seek to engage in acts of terrorism. Given that the ‘terrorist act’ definition is heavily focused on purpose, motivation and harm, individuals ought not to be able to absolve themselves of culpability for terrorist acts in the event that they utilise corporate entities to carry out such acts.

5. Inclusion of Threats

Maintaining threats within the definition of ‘terrorist act’ is critical. A separate offence would fragment the preventive framework and undermine obligations under UN Security Council Resolution 1373 to criminalise threats and preparations for terrorist acts.

The capacity to prosecute threats and preparatory conduct has prevented numerous attacks since 2001. Cases such as DPP (Cth) v Sherani⁶² involved the accused intending to threaten

⁵⁷ Council of Australian Governments, *Review of Counter-Terrorism Legislation* (2013).

⁵⁸ Leeser, J, ‘Two years on, Jewish Australians still live with the fear of October 7’, *Australian Financial Review*, 6 October 2025, available at: <https://www.afr.com/policy/foreign-affairs/two-years-on-jewish-australians-still-live-with-the-fear-october-7-20251006-p5n0en>.

⁵⁹ UN Commission on Human Rights, Res. 1998/73 (*ibid.*, § 2219) and Res. 2001/38 (*ibid.*, § 2220).

⁶⁰ Please see the Hostages Convention Preamble; SC Res 638, UN Doc S/RES/638, 31 July 1989, art 6; SC Res 1566, UN Doc S/RES/1566, 8 October 2004, art 3.

⁶¹ Bodies corporate as potential accused/offenders are already covered in the definition, subject to constitutional limitations, as per s100.4(5) and s100.1 (which includes a ‘constitutional corporation’), as well as through s100.1(2)(f). However, we have included this point because it would appear that INSLM has, to date, not prosecuted a body corporate.

⁶² DPP (Cth) v Sherani [2024] VSC 620.

police with a knife. In *Elomar v R*⁶³, the NSWCCA stated that “the anti-terrorist legislation, relevantly for the present matter, is concerned with actions even where the terrorist act contemplated or threatened by an accused person has not come to fruition or fulfilment.” Courts have interpreted the word ‘action’ in the definition to mean an actual or threatened action,⁶⁴ and the requirements of terrorist purpose and terrorist motive have also meant that threat is construed relatively narrowly. We note the difficulty of successfully prosecuting individuals for terrorism offences, and caution against overstating the impact of inclusion of a threat in the definition of a ‘terrorist act’. The most significant impact of this inclusion is likely to be the application of enlarged investigative powers to prevent preparatory offences or threats coming to fruition.

6. Exclusions and Safeguards

The current exclusions for advocacy, protest, dissent or industrial action are in our view necessary and effective. We believe that these exclusions may need to be widened so as to expressly include participation in the activities of legitimate states’ armed forces during armed conflict.

The exclusion provisions preserve democratic space while ensuring that terrorist acts are not shielded merely because they might also be a form of political expression. The exclusion also helps to ensure that the definition does not overstep in other areas where it goes beyond Australia’s international obligations.⁶⁵ In our view, existing oversight mechanisms, judicial discretion and proportional sentencing provide adequate protection against misuse.

7. Potential Refinements and Consequences of Change

Potential refinements and consequences of change have been explored in the sections above in which they are proposed. For the purposes of this review, we did not consider in detail whether a narrowly defined terrorism deception or ruse offence should be introduced to address cases where individuals deliberately induce widespread fear or emergency mobilisation through false claims of terrorism. This question warrants further exploration and expert consultation in light of the Dural Caravan incident⁶⁶ on 19 January 2025, and its far reaching implications for the Australian Jewish community and for the allocation of resources by law enforcement. A change in this area may help close definitional gaps without undermining the integrity of Australia’s counter-terrorism framework.

⁶³ *Elomar v R* [2014] NSWCCA 303, at [641].

⁶⁴ *R v Lodhi* [2006] NSWSC 584 [72].

⁶⁵ For example, by covering categories of harm that go beyond those in Australia’s international obligations.

⁶⁶ ‘AFP Deputy Commissioner National Security Krissy Barrett: statement on Operation Kissinger’, Australian Federal Police, 10 March 2025, available at: <https://www.afp.gov.au/news-centre/media-statement/afp-deputy-commissioner-national-security-krissy-barrett-statement>.

8. Conclusion

The current definition of a 'terrorist act' ought to be retained, with limited clarifying refinements. The current framework remains useful for diagnosing and preventing acts of terrorism, and for recognising their especially serious and distinct nature. It should not be weakened by the removal of the ideological, political or religious motive requirement; the collapsing of different kinds of subjective motivation into a 'one-size-fits-all' rubric that is described (or misdescribed) as "ideological; the exclusion of a terrorist purpose; the omission of terrorism threats; or the limiting of the specific harms.

In this submission we have recommended minor refinements including a possible adjustment to section 100.1(b), the inclusion of psychological harm in section 100.1(2)(a), and the express inclusion of hostage-taking in section 100.1(2).

In our view, the definition of a 'terrorist act' and counter-terrorism law more generally should be guided only by an evidence-based consideration of how terrorism actually operates, and should not be treated as a tool to smooth community-relations. To the extent that there is a perception that counter-terrorism laws are being enforced in a way that is discriminatory, then there is work to be done to ensure that the law is applied fairly and that there is better education about the purpose and operation of such laws.

Overall, the existing law has functioned to prevent terrorist acts and to hold to account those who perpetrate them. A watered down definition would expose communities, particularly the Australian Jewish community, to increased risk by removing the legal recognition that attacks specifically targeting it are acts of terrorism. This would ultimately have more far-reaching consequences because attacks on a section of the public have implications for the rights and freedoms of all members of the public.

We consent to this submission being made public and wish you well in your deliberations.

Yours sincerely,



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