



Friday, 27 January 2023

To: Parliamentary Joint Committee on Intelligence and Security

picis@aph.gov.au

Dear Committee Secretary,

We are pleased to provide this submission to the *Review of the 2022 relisting of four organisations as terrorist organisations under the Criminal Code: Islamic State Sinai Province; Islamic State in Libya; al-Qa'ida in the Indian Subcontinent; and al-Qa'ida in the Arabian Peninsula.*

IMPLICATIONS OF PROSCRIPTION LIST

We submit the following concerns about relisting ISIS and al-Qaida affiliates:

1. Muslim youth socialising ISIS material are more likely to be treated through prosecution for terrorism conspiracy. In contrast, teenagers socialising white supremacist material are more likely to benefit from diversion approaches. The disparity in treatment of minors found collecting or sharing Terrorist and Violent Extremist Content (TVEC) stems from the fact that ISIS is a listed organisation, whereas most white supremacist material is not connected to listed organisation. Australia must ensure consistent diversion and rehabilitation options for minors of all backgrounds found sharing TVEC.
2. Muslim teenagers as young as 15 have been charged under terrorism laws and are now facing adult sentencing, including up to 15 years prison.¹ Terrorism sentencing law in Australia disregards age, the scope for rehabilitation, and the absence of harm as mitigating factors, making it more rigid and harsher than other areas of criminal law.² This also leads to disparity in criminal treatment of racist nationalists who are rarely convicted under terrorism laws, and therefore have fuller consideration of mitigating factors.³

¹ 'Baby-faced terrorist: Boy faces 15 years in jail', *Adelaide Now*, 15 December 2022.

² Weinberg, M, 2021, "Sentencing Terrorist Offenders – The General Principles." *Australian Law Journal* 95:766.

³ See for eg, Meagon Dillon, Adelaide man who made 'Mother of Satan' explosives eligible for parole within months, *ABC News*, 8 September 2020, <https://www.abc.net.au/news/2020-09-08/adelaide-man-sentenced-over-mother-of-satan-explosive/12640830>.

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3. It has been indicated by ASIO that the reason some white supremacist organisations are not listed is that it would be counterproductive to bring more attention to those bodies. We query why the same approach is not taken with ISIS, especially now we have the benefit of hindsight.
4. Australia experienced significant issues with young Australians choosing to travel to Syria to fight for ISIS⁴ after being persuaded by ISIS propaganda. Counterterrorism experts have highlighted that media saturation and amplification of ISIS narratives were harmful.⁵ Teenagers who've attempted to travel overseas or have been convicted of terrorism conspiracy in Australia have followed a similar path of online interest, research and collection of materials⁶, similar to other teenagers drawn to Nazi movements.
5. The psychological profile of the Lindt Siege attack perpetrator indicates he was more likely attracted to the cult celebrity status of ISIS (when he requested the ISIS flag). Counter-terrorism experts have concluded that he was not genuinely religiously or ideologically motivated.⁷ The framing of the Lindt Siege attack had significant consequences in supercharging the anti-Islam movement in Australia, which was the predominant factor behind the growth of white supremacist and Neo-Nazi movements in Australia.⁸
6. If the paramount goal is to disrupt the financing of ISIS and al-Qaida affiliates, we ask why the same concern is not made paramount in relation to white supremacist organisations. If the risk of inadvertently increasing the profile of an organisation exists, then a consistent risk management approach should be adopted. Other mechanisms to disrupt this financing should be considered if they come with less risk to public discourse, amplification and creating double standards in policing and prosecution.
7. The different approaches to handling accused persons based on their ideology cause powerful community grievance given the degree of existing trauma in the Muslim community arising from stigma and discrimination. Unfortunately, these grievances will only exacerbate with time as more cases of violent extremism⁹ are not captured by terrorism law.

See also, Jabri Markwell, Rita "Case Study: The Conflation of Muslim Identity with Terrorism and its Connection to Far-right Extremism" in Iner, D, 2022, "Islamophobia in Australia Report III (2018-2019)," Charles Sturt University, Report no. 3, p. 125-127.

⁴ Harris-Hogan, Shandon., Barrelle, Kate., "Young Blood: Understanding the Emergence of a New Cohort of Australian Jihadists" *Terrorism and Political Violence*. 32 (2018): 1-22. 10.1080/09546553.2018.1473858.

⁵ Williams, Lauren. "Islamic State Propaganda and the Mainstream Media" *Lowy Institute*, February 26, 2016, <https://www.lowyinstitute.org/publications/islamic-state-propanda-mainstream-media>.

⁶ See, for example, R v WE (No.13) [2020] NSWSC 225, para 14.

⁷ Victorian Government, 2017, "Expert Panel on Terrorism and Violent Extremism Prevention and Response Powers," Report no. 2, 2017.

⁸ Allchorn, William., Centre for Analysis of Radical Right (CARR)- Hedayah, Radical Right Counter Narratives Project, Australian Radical Right Narratives and Counter Narratives in the Age of Terrorism (Full Report, 22 March 2021), 8.

⁹ Josh Butler, "Queensland shooting: political leaders express concern over the potential role of rightwing extremism in deaths," *The Guardian* Australia, December 15, 2022, <https://www.theguardian.com/australia-news/2022/dec/15/queensland-shooting-political-leaders-express-concern-over-potential-role-of-rightwing-extremism-in-deaths>; Eden Gillespie, "Islamic leaders question why police did not lay more serious charges after Brisbane mosque threat," *The Guardian*, Australia, October 5, 2022, <https://www.theguardian.com/australia-news/2022/oct/05/islamic-leaders-question-severity-of-charge-after-mans-threat-to-brisbane-mosque>

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We encourage the Committee to consider these consequences for social cohesion, justice and national security.

IMPLICATIONS OF RELIGIOUSLY-MOTIVATED LABEL

If the Australian Government is inclined to list these groups, we request that they are referred to as ideologically motivated, not religiously motivated.

Based on our analysis, we submit that the distinction between ‘ideological’ and ‘religious’ cause at law is erroneous in principle and counterproductive.

1. The distinction misrepresents what is at the core of violent ideology by positioning a religion and religious texts as a violent ideology or program in itself.
2. The distinction does not reflect international law, is disproportionate and imprecise.¹⁰
3. The distinction exacerbates risk conditions for violent extremism.
 - a. The distinction underwrites and promotes ISIS narratives by promoting them at scale as a religious endeavour.
 - b. It also underwrites racist nationalist narratives that Muslims are radicalised by their religion.
 - c. Official speech is extremely influential and authoritative in media and online discourse, providing powerful reinforcement for ISIS and racist nationalist movements.
4. The distinction damages protective factors by
 - a. Discouraging the participation of Australian Muslims in Home Affairs and counterterrorism policy, law enforcement, security, CVE and justice settings.
 - b. Leading to significant alienation, discrimination and grievance experienced by the Australian Muslim community.
 - c. Making it much harder for Muslim families, individuals with mental health concerns, and Muslim women to seek support.
5. The distinction has been labelled as counterproductive by counterterrorism law experts, including the former Chief Justice of the Australian High Court, the late Gerard Brennan¹¹, the former INSLM Bret Walker SC¹², and Dr Keiran Hardy¹³.

¹⁰ Vaughan, Katie., *The Interoperability of Terrorism Definitions* (Global Internet Forum to Counter Terrorism, 2022); See also Hardy and Walker mentioned in footnotes below.

¹¹ Brennan CJ, G, “Liberty’s threat from executive power.” Sydney Morning Herald, July 6, 2007, <https://www.smh.com.au/national/libertys-threat-from-executive-power-20070706-gdqjxj.html>.

¹² Walker, Bret SC. INSLM, “Independent National Security Legislation Monitor Annual Report 2012”, <https://www.inslm.gov.au/reviews-reports/annual-reports/independent-national-security-legislation-monitor-annual-report-2012> P 118.

¹³ Hardy, Kieran. “Hijacking Public Discourse: Religious Motive in the Australian Definition of a Terrorist Act.” University of New South Wales Law Journal 17, no 1 (2011): 333- 350.

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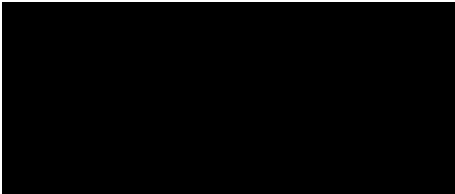
SUMMARY

In essence, we ask that the PJCIS

1. Recognise that the proscription list influences the evidentiary thresholds for prosecuting terrorism offences, policing responses, media treatment of incidents and individuals, and even social media responses to terrorist and violent extremist content.
2. Consider that ASIO may advise that it is counterproductive to list some Neo-Nazi and white supremacist organisations, however, those reasons must be considered consistently. The interaction between proscription lists and amplification and online socialisation must be consistently considered, whether the material is ISIS or white supremacist. We worry that broader implications are not being considered in relation to ISIS and al-Qaida because effects on the Muslim community and Muslim children are given less consideration.
3. Insist that Australia upholds its obligations under the Convention on the Rights of the Child, including the right to rehabilitation, the right to be sentenced as a child, and incarceration only being used as a last resort.
4. Insist that ISIS and al-Qaida in all its affiliate forms be referred to as ideologically motivated.
5. Recommend the removal of 'religious' from the terrorist act definition so that all terrorism is officially described in the most neutral and principle-based manner possible – as ideologically or politically motivated.

Should you have any questions about the contents of this letter, please do not hesitate to contact us by writing to the email below.

Yours faithfully,



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