

Committee Secretary
Senate Legal and Constitutional Affairs
Committee
PO Box 6100
Parliament House
Canberra ACT 2600



22 March 2024

BY E-MAIL: legcon.sen@aph.gov.au

Dear Committee Secretary,

The Australian Christian Lobby (ACL) is grateful for the opportunity to make a submission to the Inquiry into *Right wing extremist movements in Australia*.

We would appreciate an opportunity to meet with the Committee to discuss our submission.

Thank you for giving the following submission your careful consideration.

Yours Sincerely,

Michelle Pearse
CEO

SUBMISSION:

Right wing extremist movements in Australia

AUSTRALIAN CHRISTIAN LOBBY

About Australian Christian Lobby

The vision of the Australian Christian Lobby (ACL) is to see Christian principles and ethics influencing the way we are governed, do business, and relate to each other as a community. ACL seeks to see a compassionate, just and moral society through having the public contributions of the Christian faith reflected in the political life of the nation.

With around 250,000 supporters, ACL facilitates professional engagement and dialogue between the Christian constituency and government, allowing the Voice of Christians to be heard in the public square. ACL is neither party-partisan nor denominationally aligned. ACL representatives bring a Christian perspective to policy makers in Federal, State and Territory Parliaments.

acl.org.au

ACL Submission: Right wing extremist movements in Australia

Executive Summary

- From the diverse UN human rights authorities mentioned in this submission, the message is clear, that:
 - counter-extremism measures must relate to far more tangible, and real threats, involving violence, than the subject matter of this Inquiry; and
 - respect must be maintained for fundamental human rights, including freedom of expression.
- The Terms of Reference indicate serious incompatibility with UN international human rights norms.
- The Terms of Reference can be construed as inviting the creation of legal weaponry to benefit radical far left elements antagonistic towards those who hold more conservative political opinions, with a view to silencing their opposition.

Terms of Reference

- We note the following Terms of Reference:

That the following matter be referred to the Legal and Constitutional Affairs References Committee for inquiry and report by 6 December 2024:

Right wing extremist movements in Australia, with particular reference to:

(a) the nature and extent of movements and persons holding extremist right wing views in Australia, with a particular focus on:

(i) the threat posed by extremist movements, including right wing extremism,

(ii) the motivations, objectives and capacity for violence of extremist groups and individuals holding such views,

(iii) links between individuals and groups with international movements,

(iv) how individuals progress to committing acts of violence, and

(v) the role of the online environment in promoting extremism;

(b) the terms and operation of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023;

(c) measures to counter violent extremism in Australia, with particular focus on young people; and

(d) any other related matters.

ACL Submission: Right wing extremist movements in Australia

Introduction

The Terms of Reference are much broader than extremism associated with violence

The ACL is extremely concerned that this Inquiry is not confined to key issues such as preventing *terrorism*, countering *violent extremism*, or the implications of radicalisation that leads to *terrorism* and *violent extremism*.

The Terms of Reference only refer to violence in the following clauses, and even then without referring to threatened or actual violence but violence imagined at a remote point:

- (ii) “capacity for *violence* of extremist groups” (NB not actual or threatened violence, only “capacity” for violence);
- (iv) “how individuals progress to committing acts of *violence*” (NB well in advance of acts of violence being threatened or committed); and
- (c) “measures to counter *violent* extremism in Australia” (NB whether any violence ever occurred, was threatened, or remotely imminent).

However, the Terms of Reference also, independently, have as the target, the following (*without* violence or any mention of, or association with, violence):

- “(a) the nature and extent of movements and persons holding extremist right wing views in Australia”
- “(i) the threat posed by extremist movements, including right wing extremism”
- “(ii) the motivations, objectives and capacity for violence of extremist groups and individuals holding such views”
- “(iii) links between individuals and groups with international movements”
- “(v) the role of the online environment in promoting extremism”
- “(b) the terms and operation of the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023”
- “(d) any other related matters”

The question of violence is merely an element of certain aspects of the Terms of Reference, the minority, and then with only a remote connection to violence.

On 2 October 2015, following an intense debate, the UN Human Rights Council adopted its first resolution on human rights and countering extremism (Resolution 30/15), which described acts, methods and practices of *violent* extremism, as activities that aimed to threaten the enjoyment of human rights and fundamental freedoms, and democracy, and threatened territorial integrity and the security of States, and destabilized legitimately constituted Governments. In the 2016 report, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism was concerned about such an extensive description of the impact of violent extremism in

ACL Submission: Right wing extremist movements in Australia

Resolution 30/15, and the absence of any requirement that the activities themselves involve the use of violence, because this may allow some governments to qualify non-violent actions that are critical of the government as violent extremism. His concern was exacerbated by the reference in the resolution to “extremist ideologies or intolerance” without any reference to violence, and the use of the vague expression “supporters” of violent extremists.

Note that the Terms of Reference for this Inquiry should be of major concern because they concern activities involving no violence, not even appropriately connected to violence. Submissions are invited on whether there even exists the “*capacity* for violence of extremist groups and individuals holding such views”. The Special Rapporteur’s above concern would be expressed even more demonstrably in this circumstance, where Terms of Reference such as these contemplate the government qualifying actions entirely dissociated from violence, that are critical of the Government, as harmful extremism.

The Inquiry has a quite different, much broader ambit. It would invite adverse comment on “extremist right wing views”, “right wing extremist movements”, and “right wing extremism”, where these things have no connection with violence, or any kind of harm, and where the term “right wing” is open to broad, subjective interpretation.

In other words, the Inquiry appears to be concerned more with matters that have no current association with terrorism or violent extremism, namely harmless political, right-of-centre beliefs.

The Terms of Reference could be construed as an exercise in identifying harm where it does not exist, and in creating the opportunity of associating politically “right wing” views with extremism, to invoke justification for repressive measures against political opponents.

The Terms of Reference, and lack of an issues paper or consultation paper, opens the Government to criticism that this is a fishing expedition aimed at recruiting those Australians who are politically antagonistic to the right of politics to produce justification for imposing extremism-related restrictions, or other rights limiting measures, on Australia’s political conservatives, where no such justification remotely exists.

The Inquiry is likely to appeal to the radical far-left elements that propagate narratives that those with a message contrary to their own are posing an extremist threat when, for example, protesting in support of women’s rights or other highly politicised matters, as a means of shutting them down.

If so, this Inquiry has no legitimate basis. It lacks specificity and clear direction, and should be abandoned.

The importance of upholding fundamental human rights, including freedom of expression, form no part of this Inquiry

The following text paraphrases key UN documents on the importance of upholding fundamental human rights, especially freedom of expression, in the context of measures countering terrorism and violent extremism.

ACL Submission: Right wing extremist movements in Australia

The Terms of Reference, interestingly, make no mention of fundamental human rights at all. Human rights are, and should be made to be, a central pillar of this Inquiry. It calls into question the purpose and priorities of the Government in initiating the Inquiry.

On 24 September 2014, the UN Security Council adopted resolution 2178 (2014) which included a section on countering violent extremism. The resolution contained repeated references to the need for countries to ensure that any measures taken to counter terrorism comply with all their obligations under international law, in particular international human rights law. (Resolution 1624 (2005) already contained the clear obligation to prohibit by law incitement to commit terrorist acts, and it specifically supported article 19 of the International Covenant on Civil and Political Rights (ICCPR) on freedom of expression. In that context, the former Special Rapporteur on human rights and counter terrorism had noted that for the offence of incitement to terrorism to comply with international human rights law, it (a) must be limited to the incitement to conduct that is truly terrorist in nature; (b) must restrict freedom of expression no more than is necessary for the protection of national security, public order and safety or public health or morals; (c) must be prescribed by law in precise language and avoid vague terms such as “glorifying” or “promoting” terrorism; (d) must include an actual (objective) risk that the act incited will be committed; (e) should expressly refer to intent to communicate a message and intent that this message incite the commission of a terrorist act; and (f) should preserve the application of legal defences or principles leading to the exclusion of criminal liability by referring to “unlawful” incitement to terrorism.¹)

In January 2016, the UN Secretary-General issued a Plan of Action to Prevent Violent Extremism,² noting that where States embraced international human rights norms and standards and upheld the rule of law, they created an enabling environment for civil society and reduced the appeal of violent extremism. To be effective and sustainable, all Member States’ efforts to address violent extremism must be firmly grounded in the rule of law and international human rights law, as well as international humanitarian law if applicable.³ The Plan of Action acknowledged the insufficiency of security-based counter-terrorism measures to prevent the emergence of virulent, violent extremist groups. At that time, the UN High Commissioner for Human Rights noted that the central challenge for human rights was ensuring that governments continue to support a human rights agenda despite the rise of violent extremism and extremist thinking. Importantly, he noted that any more repressive approach would have the reverse effect of reinforcing the narrative of extremist ideologies. As the 2016 report of the Special Rapporteur explains, both the Secretary-General’s approach to violent extremism and the High Commissioner’s remarks encapsulate some of

¹ A/HRC/16/51, para. 31. A model offence of incitement to terrorism was also provided in paragraphs 29-32 of the report. See also article 5 of the Council of Europe Convention on the Prevention of Terrorism on the public provocation to commit acts of terrorism and OSCE/ODIHR, Preventing Terrorism, p. 42.

² A/70/674.

³ A/70/674, paras.20, 50.

ACL Submission: Right wing extremist movements in Australia

the complex issues which are central to the 2016 report on the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁴

The Special Rapporteur's 2016 report is especially valuable because it focused on the human rights impact of measures adopted to prevent or counter violent extremism. The report began by highlighting a number of difficulties establishing a common definition of "extremism", and the breadth of difference across countries to that question. (Note that in this Inquiry we have Terms of Reference offering no guidance on what it has mind, on the issue that is central to the Inquiry.)

In the 2016 report, the Special Rapporteur reviewed the Plan of Action, in which the Secretary-General examined various aspects of violent extremism, including its impact, context and drivers, highlighting the importance of conditions conducive to violent extremism (pillar I of the Global Counter-Terrorism Strategy) in any radicalization process. The Secretary-General set out an Agenda for Action to prevent violent extremism, which included a recommendation that each Member State adopt a national strategy to prevent the further spread of violent extremism. Most importantly, in the Plan of Action the Secretary-General acknowledged the centrality of human rights to the question of violent extremism. He recalled the critical role of respect for all human rights in preventing violent extremism and placed human rights as a red thread throughout his Plan.

This was done, first, by highlighting the negative impact that violent extremism had on human rights, as an affront to human rights and a direct threat to the enjoyment of fundamental rights.

Second, the Secretary-General noted the role that human rights violations might play in leading to violent extremism. He highlighted that narratives of grievances, actual or perceived injustice, and promised empowerment and sweeping change, became attractive where human rights were being violated. Repressive policies and practices that violated human rights and the rule of law could heighten the lure of violent extremism, while other grievances — particularly a lack of economic, social and cultural rights — also provided opportunities for violent extremists.

Concomitantly, the Secretary-General noted that individual experiences of human rights violations, such as torture or violations of due process rights, could play a role in an individual's path to radicalization. Violations of the right to education might also play a role in this process.

Finally, the Secretary-General insisted on the importance of respecting human rights when adopting measures to prevent violent extremism. Echoing the United Nations Global Counter-Terrorism Strategy, the Secretary-General noted that preventing violent extremism was a commitment and an obligation of States under the Charter of the United Nations and international human rights law. He stressed that where States embraced international human rights norms and standards and upheld the rule of law, they created an enabling

⁴ Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/31/65, 29 April 2016), para 8.

ACL Submission: Right wing extremist movements in Australia

environment for civil society and reduced the appeal of violent extremism. To be effective and sustainable, all Member States' efforts to address violent extremism must be firmly grounded in the rule of law and international human rights law, as well as international humanitarian law if applicable.

In practical terms, the Secretary-General recommended that States take a number of steps, including a review of all national legislation, policies, strategies and practices aimed at countering violent extremism, to ensure that they respected human rights and the rule of law. He also noted a number of specific measures for States to attend to: access to justice for all; fair, effective, accountable and inclusive institutions; non-discriminatory basic service provision and accountability for service delivery; professionalism of security forces, law enforcement agencies and justice institutions subject to effective oversight and accountability; accountability for gross violations of international human rights law and international humanitarian law; reform of national legal frameworks and penitentiary systems; age and gender-sensitive disengagement, rehabilitation and counselling programmes for persons engaged in violent extremism; promotion of economic, social and cultural rights; addressing incitement to violent extremism and the prohibition of advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence; appropriate measures against all forms of intolerance and discrimination based on religion or belief in the educational system; and restrictions to freedom of expression that complied with international law.⁵

Legislative, administrative and policy measures which target a range of activities, individuals and communities, and measures that target "extremist" speech, are among those that carry the risk of violating basic human rights and freedoms. Particularly concerning from a human rights perspective are measures that target specific individuals or groups based on a determination that they are particularly "at risk" of engaging in violent extremism. Such an approach can be discriminatory and stigmatize various minority, ethnic, religious or indigenous groups. The creation of inchoate offences that are far removed from the commission of acts of violence can violate freedom of expression, thought, conscience, religion or belief, while freedom of assembly and association can be affected by measures to curb "extremist" non-governmental organizations (see above comments on the Terms of Reference describing acts completely unconnected with, or remote from threats of violence). Measures that involve educational institutions can have an impact on the right to education and academic freedom. Administrative measures taken on the basis of suspicion, or secret intelligence, raise very serious concerns about the right to the presumption of innocence, due process and a fair trial. It is critical that States strictly monitor the human rights compliance of measures adopted to counter violent extremism and ensure transparency in the operation of their initiatives.⁶

⁵ A/HRC/31/65, paras 29-34.

⁶ A/HRC/31/65, paras 36-37.

ACL Submission: Right wing extremist movements in Australia

The above direction proposed by the Special Rapporteur, and the Secretary-General, should guide the Inquiry away from unprofitable pathways that have the potential to be human rights limiting and politically divisive.

In addition, it is necessary to heed the advice of the UN Human Rights Committee in its General Comment on freedom of expression, in which it stressed the need to ensure that offences such as “extremist activity” must be clearly defined to ensure that they do not lead to disproportionate interference with freedom of expression. This concern has been reiterated, with non-governmental organizations noting that “extremism” and “radicalization” are “poorly defined concepts which open the door to human rights abuses. Several Governments already routinely label political opponents and journalists as terrorists. Identifying ‘extremism’ as the problem only provides more grounds to crush dissent”.⁷

The following is a particularly important recommendation of the Special Rapporteur:

“All strategies and policies adopted by States to counter violent extremism must be firmly grounded in and comply with international human rights law. Whenever rights-limiting measures are considered, their potential impact on women, children, ethnic and religious communities or any other specific group must be considered. All measures must be subject to the same level of parliamentary and judicial scrutiny as other measures taken to counter terrorism. Particular attention should be paid to any impact on freedom of expression and freedom of thought, conscience and religion. Measures that specifically target individuals or groups, whether in law or practice, should not be discriminatory.”⁸

It is with some astonishment that the ACL notes that the Terms of Reference make no mention of the relevance of human rights to the Inquiry.

⁷ Human Rights Committee, general comment No. 34 (2011) on article 19: freedoms of opinion and expression, para. 46.

⁸ A/HRC/31/65, para 56.