

Defining Terrorism:

**Review of the definition of a ‘terrorist
act’ in section 100.1 of the Criminal Code
Act 1995**

Submission to the Independent National Security
Legislation Monitor

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

- 1) The ALA welcomes the opportunity to have input to the Independent National Security Legislation Monitor's (INSLM) Review of the Definition of a 'terrorist act' in section 100.1 of the Criminal Code Act 1995 (The '**Review**').
- 2) The ALA is an association of lawyers, legal professionals, and academics dedicated to advancing and defending the rights of individuals in Australia.
- 3) As an organisation committed to the protection and promotion of justice, individual rights, and the rule of law, we are keen to work constructively with the Australian Government to assist in the development of legislation in furtherance of these aims, for the benefit of all Australians.
- 4) The current legal definition of a 'terrorist act', contained in Division 100.1 of the *Criminal Code Act 1995 (Cth)* (The **Criminal Code**), was introduced in 2001 following the attacks of 11 September 2001. It has since underpinned the development of over 80 pieces of counter-terrorism legislation, comprising one of the most expansive anti-terror legal frameworks in the history of democracy.
- 5) While originally introduced to address grave threats to public safety, the scope and scale of these laws now raise serious concerns about proportionality, legal coherence, and democratic accountability.
- 6) Professor George Williams AO has noted that Australia's terrorism laws "*are striking not just in their volume, but also in their scope*"² and that "*Australia has thus been left with an array of interconnected laws enacted over the course of a decade whose capacity to protect the community while also respecting democratic values has never as a whole been assessed.*"³ Kent Roach has similarly aptly described this approach as one of '*hyper-legislation*.'⁴
- 7) The ALA acknowledges that terrorism, both international and domestic, remains a significant concern and that governments require a legal framework capable of preventing, disrupting, and punishing acts of politically or ideologically motivated violence for the protection and welfare of society. In this, we support the Government's decision to review the definition of a 'terrorist act'. However, counter-terrorism laws must not exceed what is determinately necessary to

² George Williams, '*The Legal Legacy of the "War on Terror"*' (2013) 12 Macquarie Law Journal 3, 7–10

³ George Williams, '*A Decade of Australian Anti-Terror Laws*' (2011) 35 Melbourne University Law Review, 1146–53

⁴ Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (Cambridge University Press, 2011), 309.

address these threats, as overzealous or vague provisions risk undermining the very democratic values they are intended to protect.

- 8) The ALA recognises that swift legislative responses to terrorism are often a political inevitability. As former Attorney-General's Department Secretary Roger Wilkins noted in the aftermath of the 2015 Paris attacks, "*in a modern, liberal democracy, that's about the only thing you can do.*" Elected officials bear both a professional and moral responsibility to protect the public.
- 9) However, such urgency can lead to cumulative overreach if not approached with care. Over the past two decades, evolving terror threats have exposed gaps in our laws that have needed to be filled. But as a result, many of the laws have gone far beyond what is now needed to combat terrorism effectively.
- 10) They also undermine core values and principles such as the rights to liberty, freedom of speech and freedom of the press.
- 11) The ALA views rights and security as being not inherently in conflict. As stated in the *International Covenant on Civil and Political Rights* (ICCPR), to which Australia is a party, the protection of human rights is an essential component of effective counter-terrorism policy. As former UN Secretary-General Kofi Annan warned in 2003:

*"If we compromise on human rights in seeking to fight terrorism, we hand terrorists a victory they cannot achieve on their own."*⁵
- 12) Similarly, in *A v Secretary of State for the Home Department*, Lord Hoffmann observed:

*"The real threat to the life of the nation... comes not from terrorism but from laws such as these."*⁶
- 13) The ALA strongly urges that this review proceed from a position of caution: not to further expand the scope of existing provisions, but to clarify and, where necessary, narrow them. National security laws must be directed squarely at the most serious and intentional forms of politically motivated violence. The values of civil rights and human dignity must not be compromised in the pursuit of national security.

⁵ Kofi Annan, 'Secretary-General's Address to the Commission on Human Rights' (Geneva, 7 April 2003).

⁶ *A v Secretary of State for the Home Department* [2004] UKHL 56, [96] (Lord Hoffmann).

Issues

1. What (if any) changes in the threat environment affect whether the definition of a ‘terrorist act’ is fit for purpose?

- 14) The ALA recognises that the national security, or ‘threat’ environment, has changed significantly since the original introduction of terrorism offences in the Criminal Code.
- 15) Since 2002, Australia’s terrorism laws have been applied predominantly to threats posed by structured, transnational groups. It is uncontroversial to take the view that today threats are more likely to emerge from lone actors, self-radicalised individuals, or small cells with diffuse ideologies.
- 16) Often, the coherence of the ideological or political motivations is uncertain, creating practical challenges in applying the existing legal threshold.
- 17) Daniel Koehler, Director of the German Institute on Radicalisation and De-Radicalisation Studies (GIRDS), has documented in particular the rise of militant right-wing extremism globally. His research indicates that such actors often operate in decentralised online environments that lack the ideological coherence necessary to satisfy the statutory test of advancing a “*political, religious or ideological cause*.”⁷
- 18) Similar developments are visible in Australia. ASIO Director-General Mike Burgess has warned of increased radicalisation among young people driven by algorithmic content delivery - a “*generation of digital natives*”⁸ – noting that:

“*We are seeing a growing number of individuals and groups that don’t fit on the left-right spectrum at all; instead, they’re motivated by a fear of societal collapse or a specific social or economic grievance or conspiracy.*”⁹
- 19) In August 2024, ASIO formally downgraded the national terrorism threat level from “probable” to “possible”, citing increased uncertainty in identifying ideological drivers. As the INSLM notes,

⁷ Koehler, Daniel. “*Violence and Terrorism from the Far-Right: Policy Options to Counter an Elusive Threat.*” The International Centre for Counter-Terrorism – The Hague 10 (2019)

⁸ Mike Burgess, *Director-General’s Annual Threat Assessment 2024* (Speech, Australian Security Intelligence Organisation, 28 February 2024) <https://www.asio.gov.au/speeches>.

⁹ <https://www.theguardian.com/australia-news/2024/nov/25/australias-official-definition-of-terrorism-to-be-reviewed-for-first-time-since-september-11-attacks>

this ambiguity further complicates the application of counter-terrorism legislation to acts where the motive is mixed or unclear.

- 20) AFP Commissioner Krissy Barrett cited an increase in *“behaviours and activities”* that, while falling short of terrorism, pose significant security threats; that the *“once-neat lines between state actors, organised crime, terrorism and espionage are collapsing,”* and in turn requires a different response from agencies such as the AFP.¹⁰
- 21) The ALA view is that these developments reinforce the importance of preserving a narrow definition of terrorism. Over-expanding the definition to capture ambiguous or mixed-motive conduct would risk drawing in individuals whose disposition and conduct may better be addressed through mental health, social services, or general criminal law mechanisms.
- 22) The UN Special Rapporteur on human rights and counter-terrorism, Professor Ben Saul, has repeatedly warned against expanding terrorism definitions in ways that incorporate vague or hybrid motives as such laws infringe the principle of legal certainty, and enable *“cascading violations of fundamental rights”*; further, that terrorism laws can be;

*“...weaponised to intimidate and arbitrarily imprison political and civil society activists, undermining liberty and freedoms of expression, assembly, association, religion and political participation.”*¹¹

and that

*“...definitions of terrorism used to list individuals or entities must be consistent with the principle of legality and best practice international standards on definition. There must be rigorous due process safeguards, independent review, and effective remedies for violations.”*¹²
- 23) Such overreach may end up instead diluting the legitimacy of counter-terrorism measures and increase the risk of their misuse or politicisation.
- 24) The ALA echoes this sentiment. Changes in the threat environment do not justify any further broadening of the definition of a ‘terrorist act’. Any expansion to capture these forms of

¹⁰ Paul Karp, ‘AFP Commissioner Krissy Barrett Warns of “Collapsing Lines” Between Terrorism, Espionage and Crime’, *ABC News* (Online, 8 October 2025). <https://www.abc.net.au/news/2025-10-08/afp-commissioner-krissy-barrett-national-security-warning/105848960>

¹¹ United Nations Human Rights Office. (2024, October 8). *Regional organisations worldwide must protect, not threaten, human rights: UN expert*. <https://www.ohchr.org/en/press-releases/2024/10/regional-organisations-worldwide-must-protect-not-threaten-human-rights>

¹² *Ibid*, 2024

violence risks introducing concepts that are too vague, too broad, and vulnerable to political manipulation of public pressure. Such laws may ultimately do more harm than good by misapplying extraordinary legal powers to conduct best addressed through criminal or public health frameworks. This, in turn, undermines civil liberties, legal certainty, and trust in national security frameworks.

2. Is the current ‘terrorist purpose’ requirement appropriate?

- 25) Section 100(1)(b) of the *Criminal Code* provides that a terrorist act must be done with the intention of coercing or influencing by intimidation the government of any jurisdiction or intimidating the public or a section of the public.
- 26) The ALA considers this ‘terrorist purpose’ requirement in its current form to be broadly appropriate and does not recommend any form of legislative amendment at this time.
- 27) The ALA agrees with the INSLM that this limb acts as a safeguard and necessary filter.
- 28) As social and political violence becomes increasingly decentralised and fragmented, the ALA recognises that the application of this requirement has become more difficult in practice. Violent acts may be fuelled by grievance or resentment but lack the intent to intimidate the public or coerce a government.
- 29) However, the ALA raises concerns that terrorism offences have been used to prosecute individuals whose conduct more closely resembles ordinary criminality, especially in the context of single-actor incidents. Professor Williams points to a report by the former INSLM, Bret Walker SC, which noted that

*“The AFP had, by the end of 2012, considered the commencement of control order proceedings against 23 other individuals. In almost half of these instances, the control order was considered as a response to there being insufficient evidence on which to prosecute the person for terrorism offences.”*¹³
- 30) The INSLM for instance, cites an example in their paper of a violent act inspired by misogynistic online ideology but lacking clear demands or threats against the government or the public.¹⁴

¹³ Rebecca Ananian-Welsh and George Williams, ‘The New Terrorists: The Normalisation and Spread of Anti-Terror Laws in Australia’ (2015) 38(2) *University of New South Wales Law Journal*, 372

¹⁴ INSLM Issues Paper, p 7 -9

- 31) The ALA believes that this purpose limb must at the very least be retained as an essential barrier against overreach. Any attempt to dilute this requirement by creating alternative purpose tests, such as acting out of grievance, social disaffection, or general hostility towards society, would risk capturing a vast range of conduct unsuited to prosecution under counter-terrorism legislation.
- 32) Importantly, this requirement also protects democratic participation. It ensures that protest, dissent, and resistance movements, while sometimes disruptive, are not wrongly criminalised under terrorism laws unless they involve violence intended to influence public institutions or coerce political change.

3. Does requiring a ‘terrorist motive’ i.e. an intention to ‘advance a political, religious or ideological cause’ remain appropriate?

- 33) Section 100(1)(b) of the Criminal Code defines a terrorist act as one committed or threatened with the intent of advancing a “political, religious or ideological cause.” This ‘motive’ requirement is a critical doctrinal threshold distinguishing terrorism from serious but otherwise ordinary criminal conduct.
- 34) The ALA supports the retention of this motive element. Retaining the tripartite structure of political, religious, and ideological motivations is defensible insofar as it captures the diversity of extremist motivations that may drive terrorist violence.
- 35) However, the ALA shares the concern expressed in the Issues Paper that the term “ideological” is inherently vague and undefined in legislation, and increasingly risks being interpreted to encompass a wide and uncertain range of beliefs, including conspiracy theories, personal grievances, or social alienation without a coherent ideology.
- 36) The central issue appears as such to be the legal clarity surrounding the term “ideological.” In practice, courts may struggle to distinguish ideology from mere personal animus or social deviance. The absence of a definition invites subjective enforcement and contributes to the erosion of the line between terrorism and general criminality.
- 37) The ALA continues to recognise that mixed motives are an increasingly common characteristic of contemporary terrorist threats.

- 38) However the ALA once more cautions against any broadening of the current structure to compensate. The very real risk is that terrorism laws will inevitably be applied to acts that are indeed serious, but not clearly stemming from a specific ‘ideology’ per se.
- 39) The ALA recommends a legislative clarification of “ideological cause.” A more precise statutory interpretation might define it as ‘a coherent system of belief that seeks to significantly alter or influence political, economic or social systems.’ This would help ensure the capturing of the appropriate entities as intended in the spirit of the original legislation.
- 40) The ALA agrees that the motive requirement must allow for hybrid or mixed motivations, while also retaining an appropriate threshold. In line with accepted principles of jurisprudence on hate crime and anti-discrimination law, courts should consider whether a *dominant* or *substantial* motive exists, rather than requiring sole ideological motivation.
- 41) The ALA notes that international jurisdictions such as Canada and New Zealand have maintained clearer boundaries around motive, including carve-outs for non-violent expression and protest.¹⁵ It is the ALA’s view that Australia should follow suit by explicitly excluding activism, protest, or emotionally driven violence from terrorism definitions, unless they clearly and deliberately advance a political, religious, or ideological cause.

4. Is the current list of specific harms appropriate?

- 42) The ALA considers the current list of harms as specified in section 100.1(2) of the *Criminal Code*, to be largely appropriate and effective.
- a) We support the continued focus on serious and objectively measurable harms. The current framework appropriately targets conduct that warrants exceptional criminalisation under terrorism laws.
- 43) While some have proposed including serious psychological harm, the ALA cautions against such expansion without clear, measurable thresholds.
- 44) We do not see a compelling need to add to or remove from the list of harms at this time. The ALA urges that any future changes should be approached cautiously and remain consistent with requisite principles of certainty and proportionality.

¹⁵ See Canadian Criminal Code, s. 83.01(1); New Zealand Terrorism Suppression Act 2002, s. 5(2).

5. What are the consequences of including a ‘threat’ in the definition of a terrorist act as opposed to having a separate offence for threatening a terrorist act?

- 45) The ALA does not support the inclusion of “threats” within the substantive definition of a “terrorist act”. Rather, threats should remain a distinct and separately codified offence, with penalties and procedural safeguards proportionate to the seriousness of the conduct.
- 46) The current definition of a “threat” in terrorism law is exceptionally broad. It may capture vague or hyperbolic statements, conditional expressions, or emotional reactions that lack both clarity and immediacy.
- 47) Australian terrorism offences carry exceptionally severe legal consequences, including control orders, extended pre-charge detention, and mandatory long-term imprisonment. Applying such consequences to the mere articulation of a threat, particularly where no real steps are taken toward execution, violates basic principles of proportionality and fairness.
- 48) The inclusion of threats also magnifies risks to freedom of expression and political communication, especially where vague, imprecise, or emotionally charged language is interpreted through a subjective lens; threats, for instance, may be purely intended to shock or provoke rather than truly intended to inspire the fear synonymous with an act of terrorism.
- 49) The inherent ambiguity in “threatening with the intention of advancing an ideological cause” invites a possible chilling effect on civil liberties. Historically significant protest movements, for example, such as anti-apartheid activism, First Nations land defence, or Palestinian solidarity, could be mischaracterised under such provisions depending on prevailing political sentiments of the time. Expanding the definition to include threats without tight constraints risks entrenching discriminatory enforcement patterns.
- 50) The ALA emphasises that the current federal and state legislation already criminalises threats through a range of provisions, including, for example:
- a. Advocating terrorism: s 80.2C of the *Criminal Code Act 1995 (Cth)*;
 - b. Threatening use of a carriage service: s 474.15 of the *Criminal Code Act 1995*;
 - c. Threats to kill or cause harm: s 31 of the *Crimes Act 1900 (NSW)*.

- 51) These existing offences provide sufficient legal tools to address threatening conduct, without requiring recourse to the extreme measures attached to terrorism charges. There is no demonstrated legislative or operational gap that would justify expanding the terrorism definition to incorporate threats.
- 52) The ALA views the inclusion of threats in the definition of a terrorist act as risking the creation of legal duplication and redundancy. Folding all threatening conduct into the terrorism framework obscures the threshold for serious national security risk and may result in unnecessary legal complexity.
- 53) The ALA refers to both the 2006 Sheller Report¹⁶ and the Parliamentary Joint Committee on Intelligence and Security (PJCIS)¹⁷, which recommended that threats be removed from the definition of a terrorist act and dealt with under separate offences in Division 101.
- 54) The ALA strongly urges against any reform proposal that seeks to broaden the scope of terrorism law to include threats without appropriate definitional safeguards, graduated penalties, and independent oversight mechanisms.

6. Is the exclusion for ‘advocacy, protest, dissent or industrial action’ necessary and effective? Are any other exceptions needed – in particular the activities of armed forces during armed conflict and the work of impartial humanitarian organisations which are lawful under international humanitarian law?

- 55) The ALA supports retaining unamended the exclusion in s100.1(3) of the Code for “*advocacy, protest, dissent or industrial action.*” It remains both necessary and effective to ensure fundamentally democratic activities, even when potentially disruptive or unlawful, are not swept into the ambit of counter-terrorism offences. Without this safeguard, there is a material risk of misapplication of anti-terrorism powers to legitimate civil action.
- 56) This is especially important for Muslim activists and communities engaged in global solidarity movements, such as those related to Palestinian human rights, who face the risk of their

¹⁶ Security Legislation Review Committee (Sheller Report), Report of the Committee (2006), Recommendation 8

¹⁷ Parliamentary Joint Committee on Intelligence and Security, Review of Security and Counter Terrorism Legislation, December 2006, Chapter 5: International Terrorism, Recommendation 10; pp. 60–62.

advocacy being wrongly interpreted as incitement or extremism. Islamophobic assumptions can distort the application of terrorism laws to legitimate dissent.

- 57) We also support adding express exclusions for:
- a) activities lawfully undertaken by armed forces during an armed conflict; and
 - b) activities that are exclusively humanitarian in character and carried out by an impartial humanitarian organisation in accordance with international humanitarian law (IHL).
- 58) This approach accords with the COAG response endorsing exclusion of acts done as part of a person's service in the Australian armed forces¹⁸ and would align s 100.1 with Australia's obligations under the Geneva Conventions and Additional Protocols¹⁹, as well as repeated UN Security Council statements that counter-terrorism measures must comply with IHL, international human rights law and refugee law.
- 59) The ALA reiterates that any new exclusion should apply only where armed forces conduct occurs in the course of, and in conformity with, IHL, and where humanitarian action is impartial, necessary and carried out lawfully within organisational mandates.

7. If you recommend a change to the definition of a terrorist act what would be the consequences of that change (legal and practical) and are there alternatives that could achieve the same objective?

- 60) The INSLM emphasises that altering the definition of "terrorist act" will not be a self-standing technical exercise; rather, it will activate a wide range of existing statutory powers and legal thresholds across hundreds of Commonwealth and state / territory laws.²⁰ The Australian Lawyers Alliance therefore, cautions that any change to the definition must be considered with full awareness of the cascade of legal and practical consequences that may flow from a change.

¹⁸ Council of Australian Governments, *COAG Response to the COAG Review of Counter-Terrorism Legislation* (2015) Recommendation 7.

¹⁹ *Geneva Conventions of 12 August 1949* (Geneva Conventions) and *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts* (Protocol I), 8 June 1977; *Protocol Additional ... relating to the Protection of Victims of Non-International Armed Conflicts* (Protocol II), 8 June 1977; UNSC Res 1456 (2003) annex [6]; UNSC Res 2178 (2014) [5]; UNSC Res 2396 (2017) [24]; UNSC Res 2462 (2019) [6].

²⁰ INSLM, *Issues Paper*, para 5.1-5.4.

Legal consequences

- 61) Expanding the definition for example, by diluting the “purpose” or “motive” limbs or incorporating vague “threats” or incoherent “ideologies” would widen the circumstances in which extraordinary counter-terrorism powers may apply. These include Preventive Detention Order (PDO) powers, control orders, continuing detention orders and other non-trial-based restrictions.
- 62) For instance, unlike conventional detention, PDOs authorise deprivation of liberty without charge, on the basis of preventing a terrorist act or preserving evidence of one.²¹ Commonwealth laws permit detention for up to 48 hours, with state laws extending that period in some cases.
- 63) Any reliance on these powers reflects a shift from arrest-on-reasonable-suspicion of offence to pre-emptive intervention for “terrorist” risk, which carries with it risks of civil rights violations.
- 64) A broader definition of the ‘terrorist act’ may also reduce legal certainty and increase the risk of mission-creep. Once powers intended for truly extraordinary threats are normalised, the distinction between terrorism and serious crime can become blurred. This was a view echoed by the UK Independent Reviewer of Terrorism Legislation, Jonathan Hall KC in the wake of the Southport attacks in 2024.²²
- 65) Former INSLM director Grant Donaldson SC, in his 2022 report, emphasised the importance of proportionality, necessity and the rule of law in counter-terrorism.²³ A broadened definition risks undermining those foundational safeguards.
- 66) Expanded definitions also have implications for constitutional and human rights safeguards: the more people and conduct fall within the terrorism regime, the higher the risk of over-application against protestors, minorities and vulnerable communities, thereby undermining civil liberties, public trust in the justice system and social cohesion
 - a) For instance, broadening the definition of a terrorist act risks reinforcing structural Islamophobia by expanding the pool of individuals subject to pre-emptive and coercive

²¹ See s 105.1–105.51 of the *Criminal Code Act 1995 (Cth)*; see also AGD, “Preventative Detention Orders”, Australian Government.

²² https://www.lbc.co.uk/article/terrorism-definition-shouldnt-be-broadened-after-southport-attacks-jonathan-hall-5Hjd299_2/

²³ G. Donaldson SC, *Independent National Security Legislation Monitor Annual Report 2022-23* (2023), 4.

state powers. Existing patterns already show disproportionate application against Muslim Australians, which undermines community trust, engagement with law enforcement, and the legitimacy of national security policy.

Practical consequences

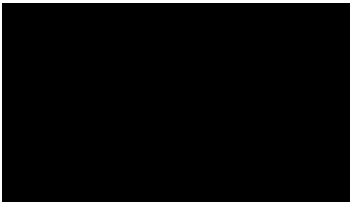
- 67) Use of PDOs and control orders may increase: If more conduct qualifies as a 'terrorist act', operational agencies may rely on pre-emptive powers more frequently. This may place greater burdens on oversight mechanisms, judicial capacity and the rule of law.
- 68) Resource diversion: Proliferation of cases under terrorism regimes may distract law-enforcement and prosecutorial resources from genuinely high-risk threats.
- 69) Chilling effect on dissent and protest: A broad definition may amplify the risk that lawful protest, industrial action or advocacy is caught in the net, especially when ideological language remains undefined. This undermines democratic participation and may generate community backlash.
- 70) Legitimacy and community trust: The public's acceptance of the severity of counter-terrorism laws hinges on the perception that they are targeted, proportionate to the risk, and fair. A broadening of the definition risks eroding that legitimacy, making cooperation from communities and witnesses less forthcoming, and instead perpetuating grievances from disenfranchised and marginalised communities.

Alternatives to Expanding the Definition

- 71) Rather than broadening the definition of a 'terrorist act', the ALA recommends the following less intrusive and more proportionate alternatives:
 - a) Clarify the existing definition
 - b) Maintain but refine thresholds for exceptional powers
 - c) Ensure alternative criminal frameworks are properly used
 - d) Strengthen oversight and transparency

Conclusion

- 72) The ALA welcomes the opportunity to have input to the *Independent National Security Legislation Monitor (INSLM)*, on the *Review of the Definition of a 'terrorist act' in section 100.1 of the Criminal Code Act 1995* (The 'Review').
- 73) The ALA is available to provide further assistance to the INSLM on the issues raised in this submission.



Ian Murray

President

Australian Lawyers Alliance