

14 October 2025

Mr Jake Blight Independent National Security Legislation Monitor By email: DefiningTerrorism@inslm.gov.au

Dear Mr Blight

### Re: Review of the definition of a 'terrorist act' in section 100.1 of the Criminal Code Act 1995

VALS welcomes the opportunity to respond 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* (**Review**).

VALS is deeply concerned with the resurgence of neo-Nazis and the continued activities, radicalisation and violence of white supremacist and genocidal settler-nationalist groups.

To speak of the definition of terrorist act without acknowledging the harm and racism that terrorism laws enable is to distract from and contribute to these harms – and by extension, the prevalence of terrorist acts.

VALS calls on the Review to consider the limitations and impact of carceral approaches to counter terrorism<sup>1</sup> and to incorporate Aboriginal perspectives of terrorism legislation and racism in counterterrorism more broadly in Australia, including police and state violence and terror.<sup>2</sup> We consider that this was missing from the

<sup>&</sup>lt;sup>1</sup> Issues Paper [3.3] says: 'Although the focus of this chapter, indeed this review, is on legislation and especially criminal law and law enforcement powers, these can only ever be one part of an effective response to terrorism and other violent extremism. Deradicalisation programs, social cohesion measures, mental health care, education and child welfare, amongst others, are all integral parts of reducing the threat of terrorism and other violent extremism. These are important and are acknowledged but fall outside scope of this review and so are not discussed in this chapter.'

<sup>&</sup>lt;sup>2</sup> See: Chris Cunneen, 'State Terror, Resistance, and Community Solidarity: Dismantling the Police' in the Routledge International Handbook on Decolonizing Justice.





Issues Paper and that it is within the scope of the Review. This is relevant to the question of what the consequences of a change to the definition might be and what the limitations of the Review are. To this end, we provide VALS' perspective on these matters **below**.

We also provide some preliminary views on the definition of terrorist act, and request to be given an opportunity to review any proposed new terrorist act definition put forward by the Review to provide feedback on unintended consequences for Aboriginal people.

### 1. Existing terrorism laws do not adequately address racist extremist terrorism

The underlying issue that needs to be addressed to truly counter terrorism is state sanctioned and systemic racism.

Aboriginal people and communities have been routinely subject to the violent and hateful actions of white supremacists and genocidal settler-nationalists since colonisation.<sup>3</sup> The violent attacks by neo-Nazis on Camp Sovereignty, interruption of a Welcome to Country at an ANZAC Day ceremony and the cowardly display of racist and hateful conduct at Northland Shopping Centre are some particularly egregious examples from the last 12 months alone. Many of the actions of these groups can and do fall within the meaning of terrorism and vilification but are rarely treated by government agencies, including police, as terrorism and vilification.<sup>4</sup>

These events demonstrate what we have always known to be true and what is often denied by politicians and fellow citizens – that Australia has a racism problem and settler-violence continues in the current day, and not just in books on early-settler

<sup>&</sup>lt;sup>3</sup> A recent and notable example of this ongoing issue is the disruption of the Welcome to Country ceremony by a white supremacist settler-nationalist during the ANZAC Day dawn service this year, see: <u>Neo-Nazis' boo Welcome to Country address at Melbourne Anzac Day dawn service</u>, ABC News (Online) (25 April 2025). Another example is the National Social Network hate crime outside of Northland Shopping Centre last week on 1 June 2025, see: Declan Brennan, <u>"Cowards": Premier slams neo-Nazi banner in Melbourne</u>, National Indigenous Times (Online) (3 June 2025). Actions

<sup>&</sup>lt;sup>4</sup> We note that the government does not list the white supremacist extremist groups responsible for the attacks discussed as terrorist organisation. See <a href="https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations">https://www.nationalsecurity.gov.au/what-australia-is-doing/terrorist-organisations/listed-terrorist-organisations</a>. Terrorist organisations are prescribed by the Australian Federal Police Minister under section 102.1(2) of the Criminal Code.





colonial history. Racism is engrained in Australian society and has been since colonisation.<sup>5</sup>

VALS' position is that the resurgence of neo-Nazis and the continued activities of white supremacist and genocidal settler-nationalist groups is not adequately addressed by criminal legal measures such as terrorist offences and warrantless search powers. We know that these are likely to have discriminatory outcomes on Aboriginal people.

After 250 years of suffering the hatred and violence of white supremacy and settlernationalist extremism, Aboriginal people deserve evidence-based and lasting responses and solutions to address the root causes of these ideologies. We deserve to be listened to when we say that carceral approaches will not address the root causes. Any laws to address extremist groups must be addressed in a targeted, evidence-based way that promotes social cohesion.

# 2. Government policies and political narratives are undermining social cohesion and enabling terrorist ideologies

The Issues Paper does not mention that government policies and political narratives with relation to Aboriginal people enable white supremacist and neo-Nazi values.

It is important to remember that extremist, racist and hateful white-supremacist views and narratives have historically been manufactured, promoted and enforced by settler governments and police as a tool of colonisation. Promulgated by the media, federal and state governments have historically spread racist narratives and values with: policies rewarding and excusing the killing of Aboriginal people in the Frontier massacres; assimilation policies removing Aboriginal children from their families and

<sup>&</sup>lt;sup>5</sup> Yoorrook Justice Commission, <u>Yoorrook for Justice Report</u> (2023).

<sup>&</sup>lt;sup>6</sup> Yoorrook Justice Commission, <u>Yoorrook for Justice: Report into Victoria's Child Protection and</u> *Criminal Justice Systems* (2023) p 49.





culture;<sup>7</sup> paternalistic protectionist policies;<sup>8</sup> apartheid policies including the White Australia policy;<sup>9</sup> and the use of Aboriginal slave labour.<sup>10</sup>

These historical policies have left an intergenerational and cultural legacy in the mainstream dominant Australian psyche and normalised the shameful idea that Aboriginal people don't deserve to be treated with dignity and respect. Governments and politicians' denial of the past<sup>11</sup> has also modelled and led to resistance and defensiveness against acknowledging basic historical truths that Australia is on Aboriginal and Torres Strait lands that were stolen, that settler-governments committed genocide, and that Aboriginal sovereignty was never ceded. This is a common element of neo-Nazi and settler-nationalist ideology and fails to recognise that the Truth brings us together in understanding and acknowledgement and is not intended to create division.

This is not a thing of the past either, there are still politicians in power (federally and in Victoria) who make decisions and statements that model and normalise disrespect towards Aboriginal people and devalue Aboriginal lives. For example: the ongoing lack of action to address Aboriginal deaths in custody;<sup>12</sup> lack of accountability for racist and discriminatory policing practices;<sup>13</sup> lack of implementation of recommendations by the Yoorrook Justice Commission;<sup>14</sup> overrepresentation of Aboriginal children and young people being removed from their families and imprisoned;<sup>15</sup> over-policing and criminalisation of Aboriginal people; and the underpolicing of crimes against Aboriginal people and investigations into missing and

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<sup>&</sup>lt;sup>7</sup> Yoorrook Justice Commission, <u>Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems</u> (2023) p 59.

Yoorrook Justice Commission, <u>Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems</u> (2023) p 49-59.
 Ibid.

<sup>&</sup>lt;sup>10</sup> Yoorrook Justice Commission, <u>Yoorrook for Justice: Report into Victoria's Child Protection and Criminal Justice Systems</u> (2023) p 49.

<sup>11</sup> At least until the Yoorrook Justice Commission in the case of Victoria.

<sup>&</sup>lt;sup>12</sup> Dechlan Brennan, '<u>Legal groups demand greater transparency as data shows Indigenous deaths in custody on the rise</u>', National Indigenous Times (Online) (30 January 2024).

<sup>&</sup>lt;sup>13</sup> VALS, 'Police Impunity must end' (Media Release) (10 October 2022).

<sup>&</sup>lt;sup>14</sup> VALS, <u>'Business as usual is not good enough – Aboriginal people deserve more from the Victorian</u> Government' (Media Release) (23 October 2024).

<sup>&</sup>lt;sup>15</sup> NIT, "Deplorable": More than 1 in 10 Aboriginal children in Victoria have been removed from their families, new data reveals (2024).





murdered Aboriginal women;<sup>16</sup> lack of progress towards meeting commitment under the National Agreement on Closing the Gap; dog-whistling;<sup>17</sup> engagement in debates and culture wars about Welcomes to Country and Acknowledgements of Country; politicisation of Aboriginal policy priorities;<sup>18</sup> and the protection of settler-nationalist celebrations on January 26 – the day that genocide against Aboriginal communities commenced.

Migration and refugee policies and narratives also contribute to settler-nationalist extremism and violence and neo-Nazism that endangers Aboriginal people and other racial and religious minorities. The announcement of the re-establishment of the government's policy of offshore detention of asylum seekers in Nauru in the week following violent anti-migration marches that included white supremacists and neo-Nazis was deeply disturbing. There is no doubt that this example of dog whistling emboldens settler-nationalism and neo-Nazism. The federal government's attempts to use migration law powers to cancel two Aboriginal people's visas further demonstrates how migration laws and policies express systemic discrimination and racism.<sup>19</sup>

#### 3. Terrorism legislation is enabling racist ideologies and discriminatory policing

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<sup>&</sup>lt;sup>16</sup> Senate Inquiry into Missing and murdered First National women and Children, <u>Final Report</u> published August 2024.

<sup>&</sup>lt;sup>17</sup> See, The Australian Institute, 'Under the Radar: Dog-whistle politics in Australia' (Report) (September 2007) 'Dog-whistle politics is the art of sending coded or implicit messages to a select group of voters while keeping others in the dark [...] Its key feature is plausible deniability: the dog whistler can say 'I didn't mean that, I meant this instead'. And it is usually a divisive or reactionary message that it conceals, one that would risk offending or scandalising more tolerant voters'. Recent examples of dog-whistling include certain politicians using 'housing and cost of living' arguments against migration as a dog-whistle and cover for xenophobia.

<sup>&</sup>lt;sup>18</sup> See Victorian Aboriginal Community Controlled Health Organisation, '<u>VACCHO Outraged by Governments Potential Backflip on Raising the Age of Criminal Responsibility</u>', (Media Release) (12 August 2024) and Victorian Aboriginal Legal Service, '<u>Victorian Government Betrays Aboriginal Children</u>', (Media Release) (20 March 2024).

<sup>&</sup>lt;sup>19</sup> See: Love v Commonwealth of Australia; Thoms v Commonwealth of Australia [2020] HCA 3. Annulled and invalidated the Department of Home Affairs (Cth) decision to cancel two Aboriginal Australian's visas pursuant to s501(3A) of the *Migration Act 1958* (Cth) relying upon the 'aliens power'. See also: Human Rights Law Centre, 'Aboriginal Australians cannot be deported as 'aliens', High Court holds', Case Summary (21 February 2020).





Carceral and criminal legal responses to terrorism include terrorism offences, bans on symbols, and warrantless investigative search and surveillance powers. VALS' position is that governments should move away from relying solely or predominately on these carceral responses to terrorism as these criminal laws and police powers do not address the root causes of social issues and instead lead to racial, religious and other discrimination in Australia. The dangers and pitfalls of carceral responses to terrorism should be considered in the Review and are as follows:

#### Terrorism offences are often misused and weaponised against Aboriginal people

Expansive and discretionary terrorism offences and powers can be strategically manipulated and weaponised against innocent people that governments seek to silence, surveil and persecute.

Colonial governments have done this to Aboriginal people before. An example of the misuse of special powers against Aboriginal people is when the Commonwealth Australian Security Intelligence Organisation (ASIO) listed non-violent Aboriginal activists in the Black Power movement as 'persons of interest' with 'extremist tendencies' and links to the Communist Party in the 1960-80s.<sup>20</sup> The group was not engaged in violent criminal activity and was instead engaged in: setting up the Aboriginal legal and medical services, the National Black Theatre in Redfern and a breakfast program for children; supporting people to make complaints against police harassment; and protesting land theft and apartheid.<sup>21</sup> Former ASIO officers confirmed that these allegations were not supported by adequate evidence and were used to justify surveillance of Professor Gary Foley, even though his activism is non-violent and based on social cohesion as opposed to hate.<sup>22</sup>

In the case of *Cruse v State of Victoria* [2019] VSC 574, it was held that police unlawfully arrested and assaulted a 19 year old Aboriginal boy Ethan Cruse as part

<sup>&</sup>lt;sup>20</sup> See testimony of Professor Gary Foley and former ASIO employees in: Gai Steel and Haydyn Keen, '<u>Aboriginal Activist Reads His Intelligence File: Australia's Black Panthers</u>' (Documentary) (2014). See also interview with Gary Foley: Sian Vate, <u>Black Power in White Australia</u>, *Jacobin* (Interview) (January 2020).

<sup>&</sup>lt;sup>21</sup> Professor Gary Foley, *Black Power in Redfern 1968-1972* (Article) (October 2001).

<sup>&</sup>lt;sup>22</sup> See testimony of Professor Gary Foley and former ASIO employees in: Gai Steel and Haydyn Keen, 'Aboriginal Activist Reads His Intelligence File: Australia's Black Panthers' (Documentary) (2014).





of the Operation Rising counter-terror investigation.<sup>23</sup> Justice Richards held that the arresting officers, and the counter terrorism agency that directed them, did not have reasonable grounds to suspect that Cruse had committed or was committing the terrorism offence for which he was arrested, and that the arrest was therefore not lawful. The arrest caused the Cruse family serious harm, including injuries and post-traumatic stress disorder, as described to the Yoorrook Justice Commission.<sup>24</sup>

In these examples, the rights of innocent Aboriginal people were undermined, and the state agencies' use of terrorism powers did nothing to address the causes of terrorism or extremism in society.

Carceral responses lead to increased discrimination, rights violations and overpolicing of Aboriginal people

As discussed above, carceral counter-terrorism measures can become a channel for discrimination by enabling increased warrantless police harassment, wrongful criminalisation and rights violations for Aboriginal people and other racialised and marginalised minorities.

Warrantless search powers unacceptably increase the risk of police interaction for Aboriginal people as police enforce these powers based on racist assumptions, stereotypes, and bias. Evidence shows Aboriginal people are 11 times more likely to be searched with the use of warrantless police powers.<sup>25</sup> This police interaction risks Aboriginal safety, lives and rights, as evidenced by the high numbers of Aboriginal deaths in custody that continue to this day.

These discriminatory powers threaten multiples rights, including the rights to privacy and freedom from arbitrary interference with one's personal life;<sup>26</sup> freedom from

<sup>&</sup>lt;sup>23</sup> See: Human Rights Law Centre, <u>Terror raids and police brutality: Supreme Court of Victoria finds arrest of Melbourne man unlawful</u> (Website).

<sup>&</sup>lt;sup>24</sup> Dechlan Brennan, <u>Yoorrook Justice Commission hears "horrific" testimony of police raid on Aboriginal family's home</u>, National Indigenous Times (29 May 2023).

<sup>&</sup>lt;sup>25</sup> Centre Against Racial Profiling, <u>The Racial Profiling Data Monitoring Project: 'Key Findings'</u> (Website).

<sup>&</sup>lt;sup>26</sup> s 13, Charter of Human Rights and Responsibilities Act 2006 (Vic) ('**Charter**'). Charter rights not to have that person's privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and not to have that one's reputation unlawfully attacked.





arbitrary detention;<sup>27</sup> equality before the law and non-discrimination;<sup>28</sup> dignity and respect;<sup>29</sup> and can also impact on the exercise of the right to peaceful assembly and political expression. In the example from *Cruse v State of Victoria* [2019] VSC 574 discussed above, the misuse breached Ethan's Victorian Charter rights against arbitrary interference with his privacy, family, home or correspondence and the right to not have his reputation unlawfully attacked.<sup>30</sup>

### Criminalisation measures can strengthen extremist groups

Beyond enabling discrimination, counter-terrorism laws can also inadvertently strengthen extremist groups.

For example, evidence shows that the criminalisation of terrorist symbols and flags has little to no impact on the activities of right-wing extremists. The criminalisation of symbols does little to deter violent and hateful groups from creating new symbols to express their ideologies. Indeed, there is evidence that extremist groups often modify and adapt their symbols and are undeterred by criminalisation of symbols.<sup>31</sup>

Criminalisation also risks strengthening vilifying and hateful groups by platforming and drawing attention to them and giving them a basis to frame themselves as powerful challengers to the State and/or victims of censorship, which may assist with recruitment and fundraising.

### Terrorism measures are used as a political device

The allegation of terrorism is serious and stigmatising. The classification of groups and symbols as terrorist creates a basis for controlling people, and for legitimising fear, apprehension, disapproval and exclusion towards that person, group or symbol.

<sup>&</sup>lt;sup>27</sup> s 21, Charter.

<sup>&</sup>lt;sup>28</sup> Article 2, UNDRIP; Article 26, ICCPR; and s 8, Charter.

<sup>&</sup>lt;sup>29</sup> Article 7, ICCPR and s 22, Charter.

<sup>&</sup>lt;sup>30</sup> s 13(b), Charter.

<sup>&</sup>lt;sup>31</sup> David Neiwert, <u>What the Kek: Explaining the Alt-Right "Deity" Behind Their "Meme Magic"</u> Southern Poverty Law Center (9 May 2017); Global Project Against Hate and Extremism, <u>The World's Largest Database of Far-Right Extremist Symbols</u> (September 2023); and Michael Colborne, <u>How Not to Interpret Far-Right Symbols</u>, Bellingcat (4 April 2023).





The political nature of who is and is not deemed a terrorist can lead to the discriminatory enforcement and application of terrorism laws and offences, and fuels stigma, division and racism as opposed to fostering social cohesion.

The politically selective labelling of terrorism is real and demonstrated in the Victoria Police's use of terrorist powers against anti-war activists engaged in lawful protest, <sup>32</sup> while white supremacist groups and individual actors remain under-policed and unlisted as terrorist organisations.<sup>33</sup>

The lack of policing of neo-Nazi and white supremacist individuals and groups on 31 August 2025 led to the attack of Camp Sovereignty in plain sight and stands in sharp contrast to the over-policing of anti-genocide protests.<sup>34</sup> Many Aboriginal people and communities stand in solidarity with Palestine and other nation-States experiencing genocide and are impacted by this racially discriminatory policing.

## 4. Addressing the root causes of white supremacy and settler-nationalist extremism requires non-carceral responses

As outlined above, carceral counter-terrorism strategies do not address the root causes of settler-nationalist violence and neo-Nazism. In practice, it enables further discrimination against Aboriginal people and Islamophobia and completely fails to create social cohesion, social inclusion and social change necessary to address white supremacist extremism.

The government should hold the burden of fostering social cohesion and dismantling the damage and division created by centuries of its racist policies and messaging.

Early intervention and prevention is more effective than carceral approaches

<sup>&</sup>lt;sup>32</sup> For example, police used special powers under terrorist legislation on anti-war protests at the Land Forces International Land Defence Exposition in Melbourne's CBD, as documented in MALS, <u>Legal Observer Team Report: The Policing of the DLF Protests</u> (January 2025).

<sup>&</sup>lt;sup>33</sup> As evidenced by the lack of formal and timely police and government response to the Neo Nazi action at the Northland Shopping Centre on 31 May-1 June, and the fact that multiple prominent Neo Nazi organisations are not listed as terrorist organisations (see footnote 4).

<sup>&</sup>lt;sup>34</sup> MALS, <u>Legal Observer Team Report: The Policing of the DLF Protests</u> (January 2025), and VALS, '<u>VALS supports the right to protest and condemns Victoria Police's response to anti-war protests'</u> (Media Release) (23 September 2024).





The most effective approach the government can take to address the root causes of white supremacist, and settler-nationalist violent extremism and terrorism is through non-carceral measures that go to the root-causes of terrorism and extremism, including:

- introducing early intervention, intervention, and diversion strategies at the precriminal stage to help prevent or reduce the escalation of violent behaviour, thereby enhancing community safety and supporting individuals at risk of radicalisation. EXIT programs in Sweden and Germany have helped to support hundreds of people to leave right wing extremist groups;<sup>35</sup>
- limiting the spread, influence, normalisation and attractiveness of violent extremist ideologies and propaganda by actively countering their narratives and holding social media companies responsible where it is promoted and spread in the online domain; and
- tackling individual and community vulnerabilities by building resilience and
  offering effective support systems and coping mechanisms to people susceptible
  and vulnerable to radicalisation, to reduce their likelihood of turning to violence in
  response to perceived grievances, adversity or hardship.<sup>36</sup>
- efforts to promote social cohesion in civil society, as one of the key factors linked with community resilience against violent extremism.<sup>37</sup>

VALS is open to supporting all governments in a collective pursuit of social inclusion, celebrating diversity, demonstrating allyship and intersectionality in its policy efforts to address white supremacist and neo-Nazi extremism and terrorism.

<sup>&</sup>lt;sup>35</sup> Dr Tore Bjorgo, <u>Exit Neo-Nazism: Reducing Recruitment and Promoting Disengagement from Racist Groups, Norwegian Institute of International Affairs</u> (2002); and EXIT Deutschland, <u>EXIT Germany</u> (Website).

<sup>&</sup>lt;sup>36</sup> This is consistent with what is identified by the Addressing Violent Extremism and Radicalisation to Terrorism (AVERT) Research Network 'as the emerging best practice around effective interventions which identifies addressing psycho-social needs rather than ideological commitment to extremism.' See: See, for example: Submission 23, AVERT (Addressing Violent Extremism and Radicalisation to Terrorism) Research Network, <u>Submission to the Legal and Constitutional Affairs References</u>

<u>Committee of the Senate Inquiry into right wing extremist movements in Australia</u> (April 5, 2024).

<sup>&</sup>lt;sup>37</sup> As discussed in: Submission 23, AVERT (Addressing Violent Extremism and Radicalisation to Terrorism) Research Network, <u>Submission to the Legal and Constitutional Affairs References</u> <u>Committee of the Senate Inquiry into right wing extremist movements in Australia</u> (April 5, 2024).





The federal government has recently held inquiries on right wing extremism<sup>38</sup> and had the benefit of expert advice and submissions in relation to the changing nature of terrorist threats and extremism and best-practice early intervention and prevention approaches to address this.<sup>39</sup> The Legal and Constitutional Affairs References Committee of the Senate Inquiry into right wing extremist movements in Australia identified six recommendations in its December 2024 report, including non-carceral early-intervention and prevention recommendations.<sup>40</sup> These should be implemented urgently.

#### The role of political leadership and the need to change policies and narratives

Beyond specific counter terrorism programs, there needs to be systemic cultural change to social and political narratives in Australia. This should be discussed in the Review as an important counter-terrorism measure.

As outlined **above**, an important measure to address extremist and terrorist ideologies is to limit the spread and normalisation of their narratives. However, government political narratives, policies and policy implementation about Aboriginal people, terrorism, migration and refugees, currently operate to align with white supremacist and neo-Nazi ideology. This is clearly intentional from some political actors, and perhaps unconscious by others.

We call on the government to use its leadership position to boldly model respect towards Aboriginal people and other racial and religious minorities, and to call out disrespect in government, corporations and the media. We believe that this will assist in supporting cultural change to promote social inclusion and to undo white supremacist extremism. This will involve politicians: calling out colleagues; standing up against harmful media corporations and platforms; resourcing Anti-Racist and

<sup>&</sup>lt;sup>38</sup> Parliamentary Joint Committee on Intelligence and Security Inquiry into extremist movements and radicalism in Australia (Report tabled on 1 April 2022) and the Legal and Constitutional Affairs References Committee of the Senate Inquiry into right wing extremist movements in Australia (Report, December 2024).

<sup>&</sup>lt;sup>39</sup> Submissions to the Legal and Constitutional Affairs References Committee of the Senate Inquiry into right wing extremist movements in Australia (2024).

<sup>&</sup>lt;sup>40</sup> Commonwealth Senate, <u>Report of the Legal and Constitutional Affairs References Committee</u> <u>Inquiry into Right Wing Extremist Movements in Australia</u> (December 2024).





deradicalisation programs; supporting curriculum change and decolonial education in support of social cohesion; changing the government's approach to migration policies that dog-whistle to neo-Nazis and cover for and normalise white-supremacy, racism and classism; and changing the government's approach to nationalist policies and narratives that deny Aboriginal people dignity and respect (such as the maintenance of the national holiday on 26 January, a day of mourning for Aboriginal people).

## 5. The exclusion for 'advocacy, protest, dissent or industrial action' in the definition of terrorist act is necessary and effective

The definition of terrorist act must maintain safeguards to protect the rights of individuals, including the carveouts for 'advocacy, protest, dissent or industrial action'.

Removing this exemption may deter the exercise of these activities, and anything that deters peaceful and safe protest participation can contravene Aboriginal people's rights to protest.<sup>41</sup> The right to protest enshrined under the right to freedom of expression, alongside the right to peaceful assembly, is protected in Victoria under the *Charter of Human Rights and Responsibilities Act 2006*<sup>42</sup> and under the Australian Constitution's implied freedom of political communication.<sup>43</sup> The right to protest is also recognised under Article 21 of the *International Covenant on Civil and Political Rights*.

The Issues Paper acknowledges terrorism laws are rights-invasive (including for people not suspected of a crime), challenge long-held rule of law values and give wide

<sup>&</sup>lt;sup>41</sup> "...the right to protest represents the individual or collective exercise of our universally recognised human rights, including our freedom of expression, peaceful assembly, association, participation in public affairs, freedom of thought, conscience, religion, cultural participation, and rights to life, privacy, liberty, security, and non-discrimination.": Human Rights Law Centre (HRLC), <u>Protest in Peril Report</u> (2024), p 4.

<sup>&</sup>lt;sup>42</sup> The Charter legislates a limited 'right of freedom of expression' (s 15) and 'peaceful assembly and freedom of association' (s 16). Public authorities can only breach these rights if the limitation can be 'demonstrably justified' (s 7).

<sup>&</sup>lt;sup>43</sup> This implied freedom of communication operates as a limit on the use of legislation to impede freedom of expression. Political communication includes non-verbal communication, assembly and movement for the purpose of political protest. The analysis requires the courts to decide if legislation burdens the freedom implied in the Constitution.





discretion to the executive The definition must do all it can to protect the rights of innocent people who police wrongly use terrorist power against.

We request the opportunity to review and provide feedback on your draft report, proposed amendments and advice before it is published. This would allow us to consider and provide feedback about whether your final recommendations are likely to have unintended consequences for Aboriginal people and communities.

VALS must be consulted on all terrorism related law reforms and be updated on the implementation of the recommendations. It is especially important to recognise and consult Aboriginal communities as key stakeholders in counter-terrorism measures given our experience of terrorist acts, and the unlawful use of terrorist powers against Aboriginal people as discussed in this letter.

Yours sincerely,

Nerita Waight

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Chief Executive Officer - VALS

Endorsed by NATSILS:44

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<sup>&</sup>lt;sup>44</sup> North Australian Aboriginal Justice Agency; Aboriginal Legal Service of Western Australia; Aboriginal Legal Rights Movement, South Australia; Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd; Aboriginal Legal Service (NSW/ACT) Limited; and Tasmanian Aboriginal Legal Service.