Law Council
OF AUSTRALIA

Inquiry into the nature and drivers of radicalisation in Australia

Parliamentary Joint Committee on Intelligence and Security

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- the Law Society of New South Wales;
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- the New South Wales Bar Association;
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for their contribution to this submission.

Introduction

1. The Law Council of Australia welcomes the opportunity to provide a submission to the Parliamentary Joint Committee on Intelligence and Security's (the **Committee**'s) inquiry into the nature and drivers of radicalisation in Australia.

2. We acknowledge the serious and evolving threat environment that currently exists in Australia, and the growing potential for digital technologies and online platforms to become concerning pathways to radicalisation. This is particularly concerning in the context of young people, especially those experiencing social isolation, who may be highly susceptible to radicalisation in an online environment where there is disillusionment with the outside world. This trend is not unique to Australia and requires a multifaceted response as evidenced by the 2024 statement from Five Eyes law enforcement and security agencies who call for a "whole-of- society response" to the radicalisation of minors.[1]

3. Our submission focusses on rule of law matters that arise in connection with the terms of reference with the goal of making counter-radicalisation measures both effective and trusted. We emphasise the need to ensure that any recommendations adopt appropriate and clear definitions of "radicalisation" and related concepts, and that these definitions should reflect Australia's human rights obligations with thresholds permitting extraordinary powers of investigation and response anchored to plausible risks of violence.

4. Without clear definitions and appropriately developed thresholds for intervention, responses to radicalisation and violent extremism risk leading to harmful or counterproductive outcomes as well as possible intrusions into the fundamental freedoms of persons who are not engaged in criminal activity. These concerned are heightened in circumstances where early intervention is contemplated. Early intervention measures by both definition and necessity increase the possibility of surveillance and government responses being directed at behaviours and beliefs that are not necessarily criminal at the time of investigation.

5. In such circumstances, the effects of imprecise definitions can be compounded; for example, by increasing the likelihood of overly of overly broad application or interventions that are unjustifiably distant from possible political violence. Our concern is that such decisions may be more likely to increase the risk of harmful or unintended consequences. Ensuring that investigators have clear definitions and thresholds for action that are calibrated precisely to their intended administrative purposes and that those definitions respond to clear and reliable evidence is important to ensure not only rule of law and human rights compliance, but to increase the social licence of any future intervention policies.

6. These concerns are most acute where children are to be investigated. Any response to the increased involvement of children in "violent extremism" must be evidence-based and oriented toward the best interests of the child to maximise the chances of

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[1] Five Eyes Insights – Young People and Violent Extremism: A Call for Collective Action (Report, December 2024) 1.

positive and lasting national security outcomes that can only follow from successful rehabilitation and reintegration.

7. We welcome findings of the Committee that might contribute to an evidence-base that accurately describes contemporary forms of violent extremism; the volume of cases identified, their location and features; and the scale of the problem in Australia. A robust understanding of contemporary pathways to political violence will assist the better development of effective, proportionate, and focussed public policy.

8. In addition to problems of scale, we note that evidence that addresses the issue of the acceleration toward political violence would particularly benefit from the scrutiny of the Committee. Acceleration, and its possible generation of urgency, can lead to a perceived decrease in the time available to investigators, and pull forward decision-making in ways that can materially increase the risks of unintended consequences. National security frameworks often contain alternative authorisation procedures for circumstances where urgency considerations can truncate ordinary procedures to accommodate timely access special powers, and but often provide more limited mechanisms for contemporaneous oversight.

9. Finally, we note that drivers to radicalisation can be considered at three levels: structural pressures (including perceived inequality, discrimination, economic insecurity and distrust of institutions); individual circumstances (including alienation, grievances and the search for purpose); and immediate social influences (including peer networks and the attraction of belonging). As was noted in the 2024 parliamentary inquiry into right wing extremist movements in Australia, there is no straightforward 'conveyor belt' that carries individuals from exposure to extremist ideas, to radicalisation, to committing violent acts.[2]

The need for clear definitions and thresholds

10. This inquiry's terms of reference encourage submissions that help to describe the social issues of radicalisation, extremism and violent extremism. We recognise the need to identify concerning behaviours (rather than beliefs) that justify further investigation, while providing appropriate protections for freedom of expression and association that are consistent with liberal democracy. We also recognise the equally pressing need to develop appropriate working definitions of the concepts under investigation. However, rule of law concerns arise where terms such as "radicalisation" or "extremism", which may be used by government to shape investigations or to suggest participation in support programs, are not defined with sufficient clarity and precision.

11. While the criminal law has a legitimate function to denounce and deter wrongdoing and to protect the community from dangerous offenders, its significant limitations as an instrument of social policy must be acknowledged. Preventative approaches necessarily take place under the shadow, not only of the general criminal law, but in close proximity to terrorism offences and the extraordinary powers of investigation and response they enliven. Careful deliberation is needed to ensure that any proposed strategies are directed to early, community-based identification,

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[2] Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, Inquiry into right wing extremist movements in Australia (Report, December 2024), 7.28.

intervention and rehabilitation of "at-risk" individuals without the threat of criminal punishment or coercion.

12. We suggest that the Committee should, in analysing the evidence presented to it, give consideration to how suitable definitions be developed to enable legitimate investigation of and interaction with problematic behaviour, while preserving freedom of expression and association, and preventing possible abuses or chilling effects that might follow from loosely defined terms. An approach to radicalisation that focuses covert and coercive powers on activities that are most proximate to violence is more consistent with the rule of law's requirements that government action is contemplated only under circumstances where the law is clear, certain, knowable, and available.

13. For example, the word "radicalisation" does not appear in any primary Commonwealth legislation that is currently in force. The most significant consideration of the noun-form of "extremism" is found in section 474.45A of the *Criminal Code Act 1995* (Cth) (the **Criminal Code**), which defines the compound phrase "violent extremist material" for the purposes of carriage service offences. That definition offers little guidance as to what "extremist" means in isolation, with paragraph (b) stating that: "a reasonable person would consider that, in all the circumstances, the material is intended to directly or indirectly advance a political, religious or ideological cause". To this end, that definition largely aligns with the motive element of the definition of a "terrorist act" at section 100.2 of the Criminal Code, but does not directly define the word "extremist". The term appears without statutory definition as an aspect of a character concern under the *Migration Act 1958* (Cth).[3] It is unclear that "extremism" or "radicalisation" are appropriate terms to be given an ordinary meaning for criminal law or migration contexts.[4]

14. The Law Council takes the view, that is consistent with the definitions adopted by the Australian Security Intelligence Organisation (**ASIO**), that the use of extradentary law enforcement and intelligence powers must be anchored to the risk of harm or violence. That is to say, the mere holding or expression of views that are considered highly controversial, offensive or generally unpalatable should not give rise to grounds for surveillance, investigation or similar. In their submission to this Committee, ASIO define radicalisation as:

> *Radicalisation is a process of psychological change where an individual's beliefs shift from mainstream views—those commonly accepted by society as normal, moral or reasonable—towards radical views that are widely rejected or considered objectionable*.[5]

15. Such a definition, in the absence of other factors, describes radicalisation in terms of the distance a belief has from a decision-maker's perception of what is "commonly accepted by society as normal, moral or reasonable", while suggesting an appeal to objectivity (e.g. "mainstream", "commonly accepted", "widely rejected or considered objectionable"). ASIO's submission concludes that "radicalisation may relate to

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3 See *Migration Act 1958* (Cth) ss 5C, 500A, and 501.

4 NB in the Macquarie Dictionary (9th ed), definitions of both terms make no reference to violence, and refer only to views that are distant from communal norms.

5 Australian Security Intelligence Agency, Submission No 8 to Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Inquiry into the nature and drivers of radicalisation in Australia* (19 October 2026), 3 [15].

changes in *any* belief, attitude or preference, [but] ASIO's specific focus is on *violent* extremism".[6] We agree with this analysis and with the appropriate limitation on ASIO's focus. There is a risk of chilling freedom of expression if approaches to "radicalisation" or "extremism" are not narrowly limited to addressing the plausible risks of violence, noting however, that less intrusive interventions such as education and support programs play an important role in redirecting behaviours and attitudes at an earlier stage.

16. Concerns regarding the meaning of "extremism" and "violent extremism" in domestic law and United Nations (**UN**) resolutions have arisen in reports by UN Special Rapporteurs on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism (**Special Rapporteur**). In 2020, the Special Rapporteur cautioned that:

> *The Special Rapporteur is concerned that … the definition of "violent extremism" remains opaque and deeply contested. She warns against the use of new terminology that, like terrorism, is overly vague and allows for broad discretion in its application.… They include, on the one hand, measures that are part of the counter-terrorism apparatus –the "soft tools" available to law enforcement—ultimately aimed at increasing the number of individuals convicted for terrorism-related crimes and, on the other hand, social and economic measures that address the long-term challenges faced by marginalized communities and individuals, substituting social, cultural and economic rights-based entitlements held by individuals and communities under international law. Both approaches come with multiple human rights challenges and must be approached with caution at every step. In that sense, the use of "violent extremism" as a basis for the adoption of new strategies, measures and legislation must be seen as significantly more hazardous for human rights than the term "terrorism"…*
>
> *She has grave concerns about the use of the terminology of "extremism" and its expanding ambit, in both policy and law in multiple States. She has serious concerns that the term lends itself to illegitimate judgments about what extremism is, highlighting that this can lead to the inclusion of non-violent groups on executive lists of "extremist" entities, one notable example of which is groups responding to the climate emergency.*[7]

17. While this caution is addressed to all States, it highlights the importance of developing a clear, specific, and limited definition of "radicalisation" and "extremism". The current holder of the Special Rapporteur's mandate is calling for submissions to inform a report on this matter to the UN Human Rights Council in early 2027.[8]

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6 Ibid 3 [16] (emphasis added).

7 United Nations Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms while Countering Terrorism, *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, UN Doc A/HRC/43/46 (21 February 2021) 5 <https://www.ohchr.org/en/documents/reports/ahrc4346-human-rights-impact-policies-and-practices-aimed-preventing-and>.

8 United Nations Special Rapporteur on counter-terrorism and human rights, 'Call for Inputs: (1) Transnational repression in counter-terrorism contexts; (2) Concepts of "violent extremism" and "extremism"', *United Nationals Human Rights: Office of the High Commission* (Website) <https://www.ohchr.org/en/calls-for-input/2026/call-inputs-1-transnational-repression-counter-terrorism-contexts-2-concepts>.

Recommendations

- **The Committee should prepare draft definitions of relevant terms for the purposes of government action for further consultation with civil society. Draft definitions should require that responses to "radicalisation" and "extremism" that engage extraordinary law enforcement or intelligence interventions are expressly linked to proximate violence, exclude lawful dissent, and demonstrate compliance with relevant human rights standards.**
- **Draft definitions should draw on contemporaneous inquiries, including the Independent National Security Legislation Monitor's review of the Criminal Code's "terrorist act" definition, the Royal Commission into Antisemitism and Social Cohesion, and the Special Rapporteur's 2027 report.**

The increasing involvement of children in violent extremism

18. The Law Council has followed—with alarm and deep concern—the series of warnings about the increasing involvement of children in the caseload of agencies investigating political violence over recent years. We also acknowledge the evidence of the Australian Federal Police (**AFP**), that "Australia is at the crossroads of a tsunami of youth crime, as young, vulnerable and impressionable individuals are being radicalised and manipulated at rapid speed".[9]

19. Young people can and do commit crimes that can have significant effects on their victims and the community. The increasing involvement of children in political violence is a worrying development that requires a nuanced and sensitive approach grounded in the rehabilitation and reintegration of vulnerable members of our community who may be at risk of acting violently.

20. Responses to this issue must be consistent with Australia's voluntarily assumed international human rights frameworks. This includes ensuring that decisions about addressing or investigating radicalisation, extremism or violent extremism are consistent with the Convention on the Rights of the Child (**CRC**), including article 3(1) that states that:

> *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.*[10]

21. It is important that any proposed policy frameworks for addressing children and extremism approach the issue of children involved in violence through the lens of the CRC. To this end, the suitability of all Commonwealth frameworks for conceptualising, investigating or responding to radicalisation should be audited for their consistency with Australia's obligations to children and how those obligations are implemented. The need for such an audit has been recently recognised by the

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9 Evidence to Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, Canberra, 21 October 2026, 14.

10 Convention on the Rights of the Child, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Art 3(1).

Independent National Security Legislation Monitor in his 2026 review of the definition of a "terrorist act" where it was recommended that an independent and thorough review should be conducted, with a focus on:

- the effectiveness of interventions to reduce the risk of children becoming radicalised;
- whether additional regulatory measures are required to assist in reducing children being targeted online or exposed to violent extremist material; and
- whether the current legal framework contains appropriate safeguards, including having regard to the CRC.[11]

22. The Law Council supports this recommendation by the Independent National Security Legislation Monitor.

Ensuring frameworks are appropriate and human rights compliant

23. It is important to ensure that investigative and coercive powers frameworks that are at risk of being increasingly applied to minors are appropriate and adapted to the unique vulnerabilities and needs of Australian children. This involves assessing whether the best interest of the child is included as a primary consideration in legislation and any guidance material. It may also involve assessing whether the objects clauses of different frameworks are appropriately calibrated to set out a requirement to respond to the needs of children. Remedying this issue may involve specifying that any special powers or extraordinary investigative techniques that are considered appropriate for adults also contain express provisions that require consideration of the best interests of the child and how the application of such powers or techniques would assist rehabilitation and reintegration outcomes, when those powers are applied to children.

24. The Law Council considers that a preventive and protective approach to child justice in line with Australia's international human rights obligations and the best available research represents best practice—for the sake not only of children who might break the law, but of victims, their families, and the broader community. We are concerned that some of the current early intervention approaches adopted by police and security agencies may be perceived by the at-risk person as punitive rather than assistive or rehabilitative.

25. Where early interventions are proposed it is preferable to adopt comprehensive, therapeutic-focused early-intervention approaches that address a person's vulnerability to radicalisation—including environmental factors—and, that involve appropriate coordination between education and healthcare services, community-based organisations and families. It is important that there is training in place to ensure such programs are administered in a non-discriminatory manner and do not target religious or racial minorities. Likewise, such training should also ensure that persons delivering interventions are able to demonstrate appropriate cultural competence

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[11] Independent National Security Legislation Monitor, *Defining Terrorism: Review of the definition of a 'terrorist act' in s 100.1 of the Criminal Code* (November 2026), rec 7.

26. While human rights obligations attach to administrative decisions, it is important that they are added to primary legislation so that decision makers are aware of their obligations before they take actions which cannot be remedied through the Courts. The inclusion of such obligations is important for developing a mature legal framework that has the flexibility to respond to imminent threats of physical harm, but subtle and resilient enough to accept that the community must rehabilitate and then reintegrate young offenders back into society in order to obtain a less fragile national security.

27. Children are owed additional obligations to ensure that they are given every opportunity to be rehabilitated and reintegrated into society with the opportunity to live fulfilling lives. This is especially so in a threat environment where the increasing presence of children in the caseload of investigating agencies requires legislation, guidelines and procedures to be capable of providing the Australian community with confidence that such interactions are designed to improve the long-term safety of the community, are evidence based, and seriously respond to the many underlying issues confronting Australian children.

28. Addressing the risk of violence from children should place particular emphasis on rehabilitation and reintegration, supporting their development and addressing environmental factors with a view to their assumption of a constructive role in society.

29. The Law Council welcomes the recent report of the Committee recommending the addition of rehabilitation and reintegration as secondary express purposes of the control orders and post-sentence order frameworks.[12] Similarly, the Committee should consider reviewing how effectively federal law responds with sensitivity to the increased presence of children in the caseload of investigators. Addressing the risk of violence from children should place particular emphasis on rehabilitation and reintegration, supporting their development and addressing environmental factors with a view to their assumption of a constructive role in society.

Investigative practices concerning children

30. The investigative methods of law enforcement should be structured and coordinated in ways that do not radicalise children or exacerbate problematic behaviours. This concern is exemplified by the decision of the Children's Court of Victoria in *CDPP v Carrick (a pseudonym)* [2023] VChC 2 (***Carrick***). *Carrick* concerned a 13-year-old child with autism spectrum disorder, significant cognitive impairment, social isolation, and a tendency to fixate, whose parents approached Victoria Police (**VP**) for assistance.[13] At the same time as they received assistance from a VP Countering Violent Extremism rehabilitation program (the **CVE**),[14] a controlled operation was conducted online by the Joint Counter Terrorism Team (the **JCTT**).[15] Magistrate

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[12] Parliamentary Joint Committee on Intelligence and Security, Parliament of Australia, *Advisory report on the Counter Terrorism Legislation Amendment Bill 2026 also reporting on the Review of post-sentence terrorism orders: Division 105A of the Criminal Code Act 1995* (Report, October 2026) [4.9].

[13] *CDPP v Carrick (a pseudonym)* [2023] VChC 2, [3].

[14] *CDPP v Carrick (a pseudonym)* [2023] VChC 2, [5]–[12].

[15] See *CDPP v Carrick (a pseudonym)* [2023] VChC 2, [19] and [20].

Fleming ultimately decided that a permanent stay of proceedings was necessary to safeguard the administration of justice for the following reasons:

> *The community would not expect law enforcement officers to encourage a 13–14 year old child towards racial hatred, distrust of police and violent extremism, encouraging the child's fixation on ISIS.*
>
> *The community would not expect law enforcement to use the guise of a rehabilitation service to entice the parents of a troubled child to engage in a process that results in potential harm to the child.*
>
> *By its conduct in attempting to radicalise [Thomas Carrick (**TC**)] for the purposes of gaining evidence to prosecute TC for the offences with which he has been charged, the AFP has completely and inevitably undermined the therapeutic process initiated by TC's parents and the CVE to seek help to engage TC in the therapeutic and rehabilitative process.*
>
> *The conduct engaged in by the JCTT and the AFP falls so profoundly short of the minimum standards expected of law enforcement offices that to refuse this application would be to condone and encourage further instances of such conduct*.
>
> *I am satisfied that to allow this proceeding to continue would not only be unjustifiably and unfairly oppressive to TC but would also lead to an erosion in public confidence in the Court's processes. The re-radicalisation of TC which was created by JCTT in the guise of OCO's chats with TC were obtained in circumstances that fall far short of the minimum standard that society expects of law enforcement officers.*[16]

31. This case raises concerns about the sufficiency of the guardrails present in controlled operations, not only in terms of their capacity to sustain public confidence in the criminal justice system, but also in terms of fairness, proportionality and appropriateness to particular children in the context of any specific vulnerabilities that may have been identified. *Carrick* offers several learnings:

    - First, families, schools and communities should have confidence that referrals to support services or early intervention programs will lead to genuine support and rehabilitation, involving coordination with specialist services in cases where specific vulnerabilities are identified. If early intervention programs are perceived as inextricably linked to covert law enforcement activity, it is unlikely that members of the community will be willing to raise concerns about at-risk people in their lives, especially children and young people.

    - Second, at-risk young people who come to the attention of security and law enforcement authorities must be treated as individuals, with their best interests remaining a primary consideration.

    - Third, where responses to at-risk members of the community involve multiple agencies across different levels of government, there should be adequate safeguards and oversight.

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[16] *CDPP v Carrick (a pseudonym)* [2023] VChC 2, [79]-[83].

32. While acknowledging the important role of law enforcement and intelligence bodies in disrupting real threats, the Court's decision to order a permanent stay illustrates the importance of specialist assessment, age-appropriate investigative practices and judicial scrutiny of risks created or intensified by government conduct. The matter emphasises the need to maintain a clear separation between therapeutic or diversionary programs from covert intelligence gathering and law enforcement, so that families can seek help from authorities with the confidence that a response will prioritise deradicalisation and rehabilitation.

Recommendations

- **Consistent with recommendation 7 of the Independent National Security Legislation Monitor's *Defining Terrorism* review, there should be a thorough review of:**
  - **the effectiveness of interventions to reduce the risk of children becoming radicalised;**
  - **whether additional regulatory measures are required to assist in reducing children being targeted online or exposed to violent extremist material; and**
  - **whether the current legal framework contains appropriate safeguards, including having regard to the Convention on the Rights of the Child.**

- **There should be a clear separation between therapeutic or diversionary programs from covert intelligence gathering and law enforcement, so that families can seek help with confidence.**

About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its constituent bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933, and represents its constituent bodies:

- the Australian Capital Territory Bar Association;
- the Law Society of the Australian Capital Territory;
- the New South Wales Bar Association;
- the Law Society of New South Wales;
- the Northern Territory Bar Association;
- the Law Society Northern Territory;
- the Bar Association of Queensland;
- the Queensland Law Society
- the South Australian Bar Association;
- the Law Society of South Australia;
- the Tasmanian Bar;
- the Law Society of Tasmania;
- the Victorian Bar Incorporated;
- the Law Institute of Victoria;
- the Western Australian Bar Association;
- the Law Society of Western Australia; and
- Law Firms Australia.

Through these bodies, the Law Council represents more than 110,000 Australian lawyers.

The Law Council is governed by a board of 23 Directors: one from each of the constituent bodies, and six Executive members elected by Directors. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President. In 2026, the Law Council Executive comprises:

- Ms Tania Wolff, President
- Ms Elizabeth Shearer, President-elect
- Mr Lachlan Molesworth, Treasurer
- Mr Justin Stewart-Rattray, Executive Member
- Mr Ante Golem, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple.

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