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12 February 2021

Committee Secretary  
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Dear Sir/Madam

**Re: Inquiry into matters relating to extremist movements and radicalism in Australia**

The Executive Council of Australian Jewry (ECAJ) makes the following submission in response to the Inquiry by the Parliamentary Joint Committee on Intelligence and Security (the Committee) into matters relating to extremist movements and radicalism in Australia. We consent to this submission being made public.

The ECAJ is the peak, elected, representative body of the Australian Jewish community. This Submission is also made on behalf of the ECAJ's Constituent and Affiliate organisations throughout Australia.

**OUTLINE OF SUBMISSION**

This submission is divided into sections as follows:

**Executive Summary**

1. Introduction – What is extremism?
2. Extremist movements and persons with extremist views in Australia - motivations, objectives, capacity for violence, geographic spread and overseas links (Terms of Reference 1 and 2)
  - 2.1 Right-wing extremism and white supremacism
    - 2.1.1 The global context
    - 2.1.2 White supremacist and other far-right extremist groups in Australia
    - 2.1.3 White supremacism and far-right extremism in Australia – conclusions and recommendations
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    - 2.2.1 The global context
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    - 2.2.3 The global Islamist group Hizb ut-Tahrir (HT) in Australia
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  - 2.3 The impact of the COVID-19 pandemic on extremist activity in Australia

3. The Commonwealth's terrorist organisation listing laws (Terms of Reference - para 3a) – listing of Hizballah (also transliterated as 'Hezbollah')
4. The role and influence of radical and extremist groups, which currently fall short of the legislative threshold for proscription, in fostering disharmony in Australia and as a conduit to persons on a pathway to extremism (Terms of reference – para 3c)
  - 4.1 *Criminal Code 1995* (Cth) - Subdivisions C and D of Division 80
  - 4.2 State and Territory laws proscribing serious vilification
  - 4.3 Part 3, Division 8 (s.93Z) of the *Crimes Act 1900* (NSW)
  - 4.4 Chapter XI of the *Criminal Code Act 1913* (WA)
5. Further steps that the Commonwealth could take to disrupt and deter hate speech and establish thresholds to regulate the use of symbols and insignia associated with terrorism and extremism, including online, giving consideration to the experience of other countries (Terms of reference – para 3d)
6. Further steps the Commonwealth could take to reinforce social cohesion, counter violent extremism and address the growing diversification of extremist ideology in Australia (Terms of reference – para 3e) - the role of education
7. Other related matters, noting the roles and responsibilities of States and Territories in Australia's counter-terrorism arrangements, and constitutional limitations (Terms of reference – para 3g) – the need for a uniform national system for classifying and recording hate-motivated crime
8. Conclusion
9. List of Recommendations

Appendix – Outline for a uniform national system for classifying and recording hate crimes

### **Executive Summary**

Although extremist movements exist in many forms, the most active and threatening of these groups in Australia at present are white supremacist groups and Islamist jihadis. White supremacist groups have experienced rapid growth in the last five years. They have developed denser links with like-minded groups overseas and are becoming better organised, less diffuse and more disciplined and capable. Whilst Islamist jihadis continue to pose a significant threat to Australia, their groups have become more atomised and less co-ordinated, and their overseas links more tenuous. In either case, a focus on leaders and key members of extremist groups will at best provide only a partial picture of those who have the greatest propensity to engage in violence, and may overlook potential offenders, including lone actors, who are on the fringes of these groups or who have only loose connections with them, especially via online platforms.

Successive Australian governments have met the challenge of terrorism by enacting more stringent national security laws and by improved resourcing of intelligence and law enforcement agencies. Understandably, there has been less legislative and associated activism by Australian authorities in addressing forms of extremism which stop short of terrorism.

White supremacist and Islamist forms of extremism are equally insidious and equally destructive of social cohesion, and for essentially the same reasons. Both forms of extremism are dedicated to the replacement of Australia's democracy, freedoms and rights by a totalitarian order enforced by brutal repression. Both use hate speech, hate-fuelled behaviour and associated thuggery or menace to promote their dystopian vision of society. Both seek to set Australian against Australian on the

basis of ethnicity, religion, gender, sexual preference, gender identity or disability. Both carry within them a clear propensity for violence, and an intimidatory menace towards any sources of opposition they encounter, including from law enforcement officials.

We have therefore recommended that a national law be enacted, analogous to current State and Territory laws applicable to criminal gangs, empowering the Minister for Home Affairs to designate an organisation as an extremist organisation if satisfied that (i) members of the organisation associate together for the purpose of organising, planning, facilitating, supporting or engaging in activities which are calculated to provoke animosity between groups or individuals in Australia on the basis of race, religion, gender, sexual preference, gender identity or disability; and (ii) the organisation or its members represent a risk to public peace, safety or order. We have recommended that the Minister have additional powers analogous to those which are available to law enforcement agencies to deal with criminal gangs, including the power to obtain control orders. Specialised units within existing counter-terrorism commands should be established, to the extent that these do not already exist, to focus on particular extremist groups and individuals who have the potential to engage not only in terrorism but also in hate crimes at a lower level than terrorism, ranging from graffiti and offensive language through to serious physical violence. These units should be properly resourced.

We have further recommended that persons who have engaged in the activities of a designated organisation should automatically be disqualified from serving in the Australian Defence Forces or any law enforcement or intelligence agency and from holding a security license.

With regard to Australia's terrorist organisation listing laws, Hizballah has carried out appalling acts of terrorism around the world. The nominal internal departments of Hizballah cannot disguise the seamless integration that exists between all so-called branches of the organisation with regard to chain of command, finances and personnel. Hizballah's own leaders have boasted that these nominal lines of division are a fiction. We have explained in detail why we believe that the activities of Hizballah as a whole represent a security threat, a threat to social cohesion and a crime risk to all Australians, and to the Australian Jewish community in particular, and why Australia should follow the example of all but one of its partners in the Five Eyes intelligence-sharing alliance (namely the US, Canada and more recently the UK) and declare the whole of Hizballah to be a terrorist organisation, not merely its so-called "External Security Organisation".

In section 4 of this submission, we consider the activities of extremist groups which currently fall short of the legislative threshold for proscription, including those of the Islamist group Hizb ut-Tahrir. Federal, State and Territory laws proscribing incitement of violence or serious vilification on the basis of race or religion have failed to deal adequately with the advocacy of violence, falling short of advocacy of terrorism, by such groups. The exception appears to be Chapter XI of the *Criminal Code Act 1913* (WA) dealing with racist harassment and incitement to racial hatred, which has demonstrated its effectiveness in a matter that came before a jury and resulted in a conviction and stiff penalty. We have recommended that analogous provisions be enacted by the Commonwealth parliament, and that, in addition, advocacy of violence (as distinct from urging or incitement of violence) on the basis of race, religion and certain other attributes also be proscribed.

In our view, legislation banning the public display of hate symbols and empowering the police to remove and confiscate hate paraphernalia would be a useful tool in countering the proliferation of

extremist ideologies, but it would only scratch the surface of the problem. Such legislation would not obviate the need for a much more systematic, whole-of-government approach to address the problem of extremism, both through legislation and, most especially, through education.

Counteracting extremism through legislative means alone will not in our view address the underlying problem, namely the propagation of the kinds of prejudice, conspiracy fantasies and other falsehoods which fuel extremism and extremist violence. Whilst legislation sets society's standards, and in that sense serves an educative purpose, those standards need to be entrenched in the ethos, culture and operations of government and civil society institutions more broadly.

Racial, religious and other forms of prejudice seem to take root at a very young age, as was demonstrated by the shocking racist bullying of Jewish children at public schools in Victoria in 2019, which included a serious assault and the harassment of a child as young as 5 years old. Inoculation of students against prejudice and extremism thus needs to begin in early primary school. Imparting good values to children in schools can be undone by other influences, especially hate-content on social media and peer-group pressure exercised via social media. Generic human rights and citizenship education are therefore not sufficient. The focus needs to be on identifying and counter-acting specific forms of racism and bigotry, and equipping students from an early age with the intellectual and ethical tools to reject them, with the aim of preventing younger people from embarking on a pathway to extremism.

We recognise that much good work continues to be done through Holocaust education and programs such as Click against Hate, but these engage mainly older students whose opinions may already have crystallised. We believe that curricula across the disciplines from K-12 should be adapted to include age-appropriate forms of anti-prejudice education which directly and specifically address commonly-encountered forms of prejudice and mythology.

Finally, in contrast to the UK, the US and Canada, we note that there is no definition of 'hate crime', 'bias-motivated crime' or even of 'racially-motivated crime' that is officially recognised throughout Australia, and no official, centralised, nation-wide recording of such crimes, or system to do so. Each state has a different legislative regime for proscribing hate crimes, and therefore a different methodology and classification process for recording these crimes.

The absence of any consistency of approach between different jurisdictions makes it very difficult to compare rates of hate crime in different parts of Australia and to draw any conclusions about hate crimes in Australia overall. The quality of any government policies aimed at addressing hate-motivated crimes in Australia will necessarily be compromised by these limitations. Proper research into and analysis of the nature, incidence and long-term trends of hate-motivated crimes in Australia continues to be constrained by the unavailability of data based on a uniform national system for classifying and recording hate crimes.

With invaluable input from our colleagues at the Australian Hate Crime Network, which we gratefully acknowledge, we have developed an outline of how such a system could operate in Australia, which is attached as an Appendix to this submission.

## **1. Introduction**

An extremist movement may be defined as that which seeks to impose a particular political, religious or ideological vision or cause or set of policies, upon society, other than through the democratic process and regardless of the views, wishes or values of others. This submission focuses on groups and individuals who have carried out or advocated acts of violence to further an extremist movement or cause, or who in the view of the ECAJ have a propensity to do so in the future. Not all groups or individuals who espouse extremist beliefs have engaged in violence, still less in acts of terrorism, or have advocated violence expressly. However, the lesson of history is that hate speech and hate-fuelled behaviour engaged in by movements with an extremist ideology have an inherent propensity towards violence.

The Australian Institute of Criminology has defined *violent extremism* as “*individuals or groups seeking to change society or a government’s policies by threatening or using violence to achieve an ideological, religious or political goal,*” and noted that there have been more than 150 planned acts of violent extremism in Australia since World War II, most of them unsuccessful.<sup>1</sup>

In the view of the ECAJ, the Inquiry is correct to focus principally on “*Islamist and far right-wing extremist groups*”. In a public statement on 24 February 2020, Mike Burgess, the Director-General of the Australian Security Intelligence Organisation (ASIO), announced that although Islamist or jihadi groups and individuals remain the principal source of potential acts of violent extremism in Australia, the threat posed by white supremacists has increased dramatically since 2016, and is now one of ASIO’s principal challenges.<sup>2</sup>

Even though Islamist and white supremacist (and other far-Right) extremists generally have a well-founded loathing for one another, hatred of, and advocacy of violence towards, Jewish and LGBTIQ people is common to the ideologies and discourse of both groups. There is thus potential for these adversaries to converge ideologically on some issues, and to co-operate in carrying out acts of violence.

Islamists and white supremacists are not the only source of violent extremism in Australia. Historically, acts of terrorist violence have been carried out on Australian soil by supporters of ethno-nationalist and national independence movements.<sup>3</sup> The explosion of a bomb outside the Hilton Hotel on 13 February 1978 killed three people and injured others. The case officially remains unsolved and defies categorisation. Lower-level acts of criminal violence have been used to further other specific causes and issues, such as protection of the environment, animal welfare, the prevention of abortion and opposition to uranium mining. These sources of extremist violence, although serious, have not been as

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**Note: All online links are as accessed on 10 February 2021**

<sup>1</sup> Shandon Harris-Hogan, ‘[Violent extremism in Australia: An overview](#)’, *Australian Institute of Criminology, Trends and Issues* paper no. 491, March 2017 (ISSN 0817-8542)

<sup>2</sup> Andrew Greene, ‘[Neo-Nazis among Australia’s most challenging security threats, ASIO boss Mike Burgess warns](#)’, *ABC News*, 24 February 2020

<sup>3</sup> Members of the Australian wing of the Croatian Revolutionary Brotherhood were responsible for the bombings of various Yugoslav and Serbian Orthodox targets in Australia between 1967 and 1973; two Armenian nationalists assassinated the consul-general of Turkey and his bodyguard in Sydney in 1980; Palestinian terrorists detonated explosives at Sydney’s Israeli Consulate-General offices and at a Jewish community club in Sydney on a single day in December 1982.

persistent as white supremacist and Islamist extremism, and have not been sustained over comparably lengthy periods.

Accordingly, this submission is limited to addressing extremism from white supremacist and Islamist sources.

## **2. Extremist movements and persons with extremist views in Australia - motivations, objectives, capacity for violence, geographic spread and overseas links (Terms of Reference 1 and 2)**

### **2.1 Right-wing extremism and white supremacism**

#### **2.1.1 The global context**

The insecurities engendered throughout the western world over the last 20 years by technological disruption, the global financial crisis, political scandals, the spread of terrorism, mass migration and, most recently, the COVID-19 pandemic, have convinced a growing proportion of people who have been the most severely affected by these developments that the international and supranational institutions which have formed the political, economic and military architecture of the post-World War II world - including the UN, NATO and the EU – no longer work and, more worryingly, that democracy no longer works. In their place, they have sought refuge in authoritarian nationalism, a re-assertion of state sovereignty and a recrudescence of racial supremacism and crude, triumphalist versions of religion.

This has been made evident by the electoral successes of Donald Trump in the US in 2016 on a platform of “America First”, of Brexit in the UK and of ultra-nationalist parties in Europe and Scandinavia. These phenomena each in their own way tapped into “*a deep current of anger, resentment and nostalgia for an imagined past that was orderly, predictable and patriarchal*”.<sup>4</sup> Young white males in search of meaning and purpose seem especially susceptible to the call of far-right extremism, the mirror equivalents of disaffected young Muslims in jihadi groups.

The defeat of Donald Trump in the US Presidential election in 2020, and the orderly completion of the Brexit process in December 2020 are in our view unlikely to bring an immediate halt to these trends. In the US, the bizarre ‘QAnon’ conspiracy movement is still popular, despite the defeat of President Trump.<sup>5</sup> Its proponents, who are also active online in Australia, believe that he was secretly battling a cabal of deep-state actors and their celebrity allies who were, in turn, engaged in satanic worship and paedophilia. This narrative is frequently embellished with classical antisemitic tropes.<sup>6</sup>

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<sup>4</sup> Anne-Marie Slaughter, ‘[Donald Trump and Vladimir Putin want to create a new world order](#)’, *Financial Times*, 22 July 2018.

<sup>5</sup> Dave Davies, ‘[Without Their 'Messiah,' QAnon Believers Confront A Post-Trump World](#)’, *National Public Radio*, 28 January 2021

<sup>6</sup> Rachel E. Greenspan, ‘[QAnon builds on centuries of antisemitic conspiracy theories that put Jewish people at risk](#)’, *Insider*, 25 October 2020

Currently, white supremacists across the globe and in Australia are motivated principally by the ideology of Identitarianism,<sup>7</sup> which is based on a conspiracy theory that a “Great Replacement” or a “white genocide” is occurring in western countries whereby their governments are conspiring to replace the local white European population with non-white immigrants.

This supposed “replacement” is often blamed on Jews,<sup>8</sup> and has been the professed motivation for a series of violent attacks against Jewish people and religious and communal institutions in the US (in Overland Park, Kansas, in 2014; Pittsburgh, Pennsylvania in 2018; and Poway, California in 2019) and in Europe (including the shootings outside the synagogue in Halle, Germany on 9 October 2019).<sup>9</sup> There have been no comparable attacks to date in Australia. In the United States, data collected by the FBI consistently show that Jews, while being only 2% of the US population, are each year the targets of between 55% and 74% of all hate crimes in the US motivated by religion, far in excess of any other group in this category.<sup>10</sup>

The other principal targets of violent action by white supremacists have been Muslims. Muslim communities in Australia have reported a surge in anti-Muslim incidents and discourse, especially online, but including in-person verbal abuse and assaults.<sup>11</sup> Some mosques for the first time are reportedly looking to engage security guards and use CCTV cameras to protect their venues,<sup>12</sup> measures which Jewish places of worship in Australia have implemented for many years.

The most extreme cases of anti-Muslim violence have occurred overseas, most notably the mass shooting by a white supremacist of worshippers at mosques in Christchurch New Zealand in March 2019, which claimed the lives of 51 people and injured 40 others. A further nine Muslims were shot dead in another incident carried out by a white supremacist in Hanau Germany in 2020.

Separately, Hispanic Americans were the apparent targets of a white supremacist who shot and killed 23 people and injured 23 others in a mall in El Paso in the US in 2019.

It is significant that in each of these cases the murderers appear not to have belonged to any group, but were individuals indoctrinated and radicalised mostly by online interaction with members of Identitarian groups. Some of them clearly also had personality disorders and other mental health issues. They may never have met physically with others in the group, but were

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<sup>7</sup> Dr. Heidi Beirich, ‘[Antisemitism and the far right movements](#)’, *Tolerance*, 23 January 2021

<sup>8</sup> The chants heard during the deadly riots in Charlottesville in the US in August 2017, where extremist protesters proclaimed “Jews will not replace us,” was a clear expression of the paranoid fantasy that “the Jews” in western countries import immigrants to displace white populations.

<sup>9</sup> For an excellent summary of these terrorist incidents, see Dr. Heidi Beirich, ‘[Antisemitism and the far right movements](#)’, *Tolerance*, 23 January 2021.

<sup>10</sup> For example, “*Hate crimes motivated by religious bias accounted for 1,650 offenses reported by law enforcement [in 2019]. 60.3 percent were anti-Jewish; 13.3 percent were anti-Islamic (Muslim); 4.0 percent were anti-Catholic; 3.6 percent were anti-Other Christian.*” [‘2019 Hate Crime Statistics’](#), US Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 2019.

<sup>11</sup> Amy Greenbank, ‘[Islamophobic abuse mostly directed at women wearing headscarves while shopping, study finds](#)’, ABC News, 18 November 2019.

<sup>12</sup> Brian Bennion, ‘[Man carrying machete at mosque prompts calls for greater security](#)’, *Courier Mail*, 11 October 2019.

connected via online platforms. It was the support they derived from their interaction with the online sub-culture of one or more of such groups that contributed to their radicalisation.

A focus on leaders and key members of white supremacist groups will therefore at best provide only a partial picture of those who have the greatest propensity to engage in violence, and may overlook potential offenders, including lone actors, who are on the fringes of these groups or who have only loose connections with them, especially via online platforms.

## **2.1.2 White supremacist and other far-right extremist groups in Australia**

Informal and institutionalised racism have had a long history in Australia. The end of the White Australia policy, reconciliation with Indigenous Australians and the evolution of a multicultural Australia have enjoyed broad support among Australians, but have been actively resisted by minuscule groups on the far-right fringes of Australian politics.

Fascist groups made their first appearance in Australia before World War II, but it was not until the 1980s that they engaged in organised acts of violence. In 1982, the white supremacist group known as National Action was established by, among others, Jim Saleam, a neo-Nazi activist, and convicted criminal. It was wound up in 1991 after the murder of a member in the group's headquarters at Tempe in Sydney.<sup>13</sup> Members of the group, and of its breakaway organisation, the Australian Nationalist Movement (ANM), committed several violent assaults against 'leftists', and ANM leaders robbed and fire-bombed businesses owned by Asian Australians in Western Australia with the intention of intimidating Asians and inciting a race war.<sup>14</sup>

The focus of Australian far-right groups shifted to Muslim immigration in the wake of a series of gang rapes that targeted Anglo-Celtic women in Sydney in 2000 carried out by a group of Lebanese Australians led by Bilal Skaf; the mass terrorist attacks carried out by al-Qaeda in the United States on 11 September 2001; the Cronulla riots in 2005; the 'invasion' of central Sydney by Salafi Muslim extremists in September 2012; and the horrific and self-publicised murders carried out by Islamic State jihadis, including a number who came from Australia, in establishing the group's short-lived Caliphate in Syria and Iraq and in terrorist attacks around the world between 2014 and 2019.

The last 10 years in particular have seen a burgeoning of far-right groups in Australia. They represent every conceivable gradation of far-right political opinion, from anti-immigrant and anti-globalist groups who seek to 'restore' Australian democracy by removing 'alien' foreign influences, to secretive cabals of Hitler-saluting neo-Nazis who are intent on overthrowing it. The current crop of white supremacist and far-right groups have evolved from a melange of loosely-organised groups espousing an assortment of Australian nationalist ("patriotic") themes and anti-immigrant, anti-multicultural, anti-Muslim, antisemitic, anti-Indigenous, anti-Asian and anti-gay hatreds.

As documented in the ECAJ's Annual Reports on Antisemitism in Australia since 1989, anti-semitism has been a constant of groups on the extreme right.

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<sup>13</sup> Jano Gibson and Wendy Frew, '[No apology for White Australia policy](#)', *Sydney Morning Herald*, 12 January 2008.

<sup>14</sup> 'Arsonist Afraid of Group, Judge Told', *The West Australian*, 5 April 1990.

A recurring feature of the broader range of far-right groups has been their short life-span and lack of staying power, and a tendency for their members to split away and form new groups following internal quarrels about ideology, strategy and tactics. Their focus overwhelmingly is on disaffected young men of “white” background, especially those with a sense of entitlement over “non-whites”, or who believe their relative economic and social status is declining and are looking for others to blame. This may include a fixation with the idea that the ordinary exigencies of life and of the economic cycle are the results of a conspiracy.

An important moment in the development of these groups was the founding in 2015 of the self-described Australian nationalist group, ‘**Reclaim Australia**’, in protest against Muslim immigration to Australia and its alleged influence in changing Australian culture. The group was formed against the backdrop of the declaration of a caliphate in 2014 by the terrorist organisation Islamic State in parts of Iraq and Syria in which it had committed appalling atrocities. One of Reclaim’s founders claimed to have been galvanised into action by the terrorist incident at the Lindt Café in Sydney in December 2014 carried out by a lone gunman who had forced hostages to display an Islamist flag.<sup>15</sup> ‘Reclaim Australia’ held successful rallies in various State capital cities in 2015 and 2016 but appeared to go into decline after January 2017 when a rally in Sydney attracted only meagre numbers.

Although the rhetoric of ‘Reclaim Australia’ was directed against Muslim immigration and ‘culture’, it had associations from the beginning with individuals and groups with a broader racist agenda. Breakaways from ‘Reclaim Australia’ soon began to feed into more extreme groups.<sup>16</sup>

Thus, when ‘Reclaim Australia’ began to decline, groups with an overtly neo-Nazi agenda rose to prominence on the far right in Australia. The ECAJ’s *Annual Report on Antisemitism in Australia 2017* provides a detailed picture of the various neo-Nazi and other far-right groups, and their principal figures, at that time.<sup>17</sup>

One such group was the **United Patriots Front** (UPF), formed by the self-styled ‘Great Australian Patriot’, Shermon Burgess, in May 2015. On 4 October 2015 three of its other leaders, Blair Cottrell, Neil Erikson, and Christopher Shortis staged an ‘Islamic style’ mock-beheading involving a mannequin, while being videoed. The mock execution occurred outside the Bendigo City Council offices. In September 2017 the three were found guilty by a Victorian magistrate of knowingly engaging in conduct with the intention of inciting serious contempt for, or revulsion or severe ridicule of, another person or class of persons, namely Muslims, on the ground of their religious belief or activity, contrary to section 25(2) of the *Racial and Religious Tolerance Act 2000* (Vic). They were each fined \$2,000. Cottrell’s appeal against his conviction was dismissed by the County Court of Victoria on 19 December 2019.<sup>18</sup>

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<sup>15</sup> Josh Dye, ‘[Founders of 'anti-Islamic' group Reclaim Australia make first television appearance on Channel Seven's Sunday Night](#)’, *The Age*, 19 October 2015.

<sup>16</sup> Joshua Robertson and Daniel Hurst, ‘[George Christensen welcomes Reclaim Australia split, rejecting 'anti-Muslim' element](#)’, *The Guardian Australia*, 19 July 2015

<sup>17</sup> Julie Nathan, [Report on Antisemitism in Australia 2017](#), Executive Council of Australian Jewry, 26 November 2017, p.99.

<sup>18</sup> [Cottrell v Ross \[2019\] VCC 2142](#) (19 December 2019)

On 12 June 2019, Burgess posted the following on his page on the Gab website:

- "it is time to legalise the Kike Cull"
- "The only way to stop suicide is to cleanse the world of the Zionist Jew"

The word "Kike" is an extremely derogatory word for "Jew". In other posts, Burgess called for people to "pick up a rifle before it's too late".<sup>19</sup> He was not prosecuted for these posts.

Closely associated with UPF in its membership, but even more overtly committed to violent methods including 'street vigilantism' against 'non-white' targets, was a group calling itself the '**True Blue Crew**'. This group began as an anti-Islam protest group in 2014-2015. However, in August 2016, one of its members, Phillip Galea, was charged with terrorism-related offences including a planned attack against various "leftist" organisations in Melbourne. It was alleged that Galea in company with others intended to cause as much devastation to these targets as possible, using improvised explosive devices. Galea blamed his targets for the "Islamisation" of Australia. After a two-week trial, Galea was convicted by a Victorian Supreme Court jury.<sup>20</sup> On 20 November 2020 he was sentenced to 12 years imprisonment with a 9-year non-parole period.<sup>21</sup>

Rapidly rising to prominence was the overtly neo-Nazi group '**Antipodean Resistance**' (AR), formed in 2016.<sup>22</sup> AR adopted an ideology that is neo-Nazi, white supremacist, antisemitic, anti-gay, and against non-white immigration, as indicated by the posters and stickers it has distributed and its pronouncements online.<sup>23</sup> The following are some examples of the latter:<sup>24</sup>

- *We National Socialists here, as well as our brothers abroad, are going to take our nations back.* (28-12-2016)
- *Our immediate goals are to gather all fanatical National Socialist young Australians into one youth movement, and not only be politically active, but also embody our worldview as National Socialists* (21 February 2017)
- *We're inspired by three main groups, the greatest of all being National Action in the UK, but the Nordic Resistance Movement and of course the National Socialist German Worker's Party are major inspirations. National Action is the best model for a new group of young men to use in this day and age [...] The Nordic Resistance Movement would have to be the premier current National Socialist organisation in the world, and their style is what we would hope to transition towards into the future.* (21 February 2017)

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<sup>19</sup> Julie Nathan, [Report on Antisemitism in Australia 2019](#), Executive Council of Australian Jewry, 24 November 2019, p. 127.

<sup>20</sup> ['Far-right extremist Phillip Galea found guilty of plotting terror attacks in Melbourne'](#), Australian Associated Press, 5 December 2019

<sup>21</sup> Danny Tran, ['Far-right terrorist Phillip Galea jailed for 12 years after plotting against 'Muslims and lefties' in Melbourne'](#), ABC News, 21 November 2020

<sup>22</sup> *Ibid*, pp 100-106.

<sup>23</sup> Julie Nathan, ['Antipodean Resistance: The Rise and Goals of Australia's New Nazis'](#), ABC Religion and Ethics, 20 April 2018.

<sup>24</sup> Reproduced in Julie Nathan, [Report on Antisemitism in Australia 2017](#), Executive Council of Australian Jewry, 26 November 2017, pp.100-101.

- *the main part of what we do is currently posterizing, stickering, hiking/camping, martial training, and creating murals.* ('About' page - Sept 2017)
- *We will bring the final victory of White Australia through rallies, demonstrations, and posterizing. We will lay the groundwork for our own unity via social events and group activities.* (Sept 2017 home page)

The references to “our brothers abroad”, “National Action in the UK”, and “the Nordic Resistance Movement” are references to other neo-Nazi groups abroad which, like AR, were spawned from the ‘Iron March’ message board, established in 2008 and which disappeared from the internet in November 2017.<sup>25</sup> These other groups have openly espoused violence and are well known for being associated with violent criminal behaviour.

National Action was proscribed in the United Kingdom under the *Terrorism Act 2000* on 16 December 2016, but it has reportedly continued to operate clandestinely.<sup>26</sup> In 2020, four people were convicted of being members of the group and were imprisoned.<sup>27</sup> The US neo-Nazi group ‘Atomwaffen Division’ also originated on the Iron March website and had links with AR. Members of Atomwaffen Division have been involved in several murders,<sup>28</sup> and celebrated the stabbing murder of a gay, Jewish student allegedly carried out by an Atomwaffen member.<sup>29</sup> Another member was charged with plotting to firebomb one or more Jewish community sites in Las Vegas.<sup>30</sup>

Activists in AR took great pains to preserve their anonymity, albeit with limited success. Social media posts with pictures of their activities blanked out the faces of the people involved behind a digital mask in the shape of the Nazi ‘Totenkopf’ (death’s head). Some of the group’s posters have expressed support for violence and murder. One poster features a call to “*Legalise the execution of Jews*” and depicts a caricature of an historic photo showing a Nazi SS officer pointing a pistol at the back of the head of a Jewish victim at the edge of a pit.<sup>31</sup> Another calls for the killing of homosexuals, and depicts a caricature of a gay man being shot in the head.<sup>32</sup>

AR appeared to reach its high-water mark as an organisation during 2017-2018, before becoming inactive online in September 2018. Its front organisation, the ‘**Lads Society**’, formed in 2017 by ex-UPF, ex-Australian army soldier Thomas Sewell, included among its senior figures Cottrell, Eriksson and Shortis, as well as AR figures, Nathaniel Anderson and Jacob Hersant. Lads Society figures were involved in a failed attempt to branch-stack the NSW Young Nationals in 2018 as part of a plan to infiltrate established political parties in order to subvert them and

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<sup>25</sup> James Poulter, ‘[The Obscure Neo-Nazi Forum Linked to a Wave of Terror](#)’, *VICE*, 12 March 2018.

<sup>26</sup> ‘[Former members of banned terror group meet at far-right training camp](#)’, *ITV News*, 20 March 2017.

<sup>27</sup> PA Media, ‘[Four UK neo-Nazis jailed for membership of National Action](#)’, *The Guardian UK*, 9 June 2020.

<sup>28</sup> James Poulter, ‘[The Obscure Neo-Nazi Forum Linked to a Wave of Terror](#)’, *VICE*, 12 March 2018.

<sup>29</sup> A.C. Thompson, Ali Winton, Jake Hanrahan, ‘[Inside Atomwaffen As It Celebrates a Member for Allegedly Killing a Gay Jewish College Student](#)’, *ProPublica*, 23 February 2018.

<sup>30</sup> Joe Sexton, ‘[Las Vegas Man Arrested in Plots Against Jews Was Said to Be Affiliated With Atomwaffen Division](#)’, *ProPublica*, 14 August 2019.

<sup>31</sup> This and other posters supporting the mass killing of Jews are reproduced in Julie Nathan, *[Report on Antisemitism in Australia 2017](#)*, Executive Council of Australian Jewry, 26 November 2017, pp. 197-198

<sup>32</sup> Julie Nathan, ‘[Antipodean Resistance: The Rise and Goals of Australia's New Nazis](#)’, *ABC Religion and Ethics*, 20 April 2018

move their policy positions to the far right. This was under the direction of Clifford Jennings, a neo-Nazi from the far-right group ‘The Dingoes’ and ‘New Guard’ Facebook group (named after a pre-War fascist group in Australia), who had joined the Nationals in December 2017.<sup>33</sup>

Overall, the primary public focus of the far-right scene in Australia has evolved since 2015. Groups which primarily rallied around opposition to Muslim immigration to, and alleged influence within, Australia have been eclipsed by groups with an antisemitic and overtly neo-Nazi ideology. As was noted in the ECAJ’s annual report on Antisemitism in Australia released on 25 November 2018:

*“There has been a noticeable emboldening of the far right, as has been occurring in much of the Western world. Many far right individuals in Australia who were formerly active against Islam and Muslims during 2015-2017 have now switched their focus away from Muslims and towards Jews. They have adopted the conspiracy theory that “the Jews” are plotting and orchestrating the genocide of the European races [via Muslim immigration], which they refer to as “White Genocide”,*

*...One neo-Nazi group, Antipodean Resistance, was responsible for 133 (36%) of the year’s total of 360 [antisemitic] incidents, mostly consisting of placing posters, stickers, graffiti and murals in public places. Antipodean Resistance was also responsible for one more serious incident involving vandalism. The total number of incidents attributable to Antipodean Resistance rose from 50 in the previous year, a rise of 166%.”<sup>34</sup>*

After AR became inactive online a new group appeared in late 2018, ‘**Identity Australia**’, with some of the same personnel. In its online and other activities, Identity Australia retreated from crude and overt Nazism to a more generic white nationalism.<sup>35</sup>

However, on 8 January 2020 a new organisation, ‘**National Socialist Network**’ (NSN) went public online, as an apparent successor to AR. NSN appears to involve many of the key figures of AR and the Lads Society.<sup>36</sup> NSN also expressly subscribes to classical National Socialist ideology, as espoused by Adolf Hitler and the pre-War German Nazi Party. It calls for “*the coming race war*” to redeem “*embattled Aryan mankind*” and “*create a White Australia of the National Socialist and Fascist creed!*” Its slogan is “*White Revolution is the only Solution*”.<sup>37</sup>

NSN’s main public profile was initially online. However, NSN members also placed stickers and/or photographed themselves, often with the NSN flag at universities and in other public places. NSN seems to prefer Celtic-style symbols to the Nazi swastika, although it uses both.

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<sup>33</sup> Alex Mann, ‘[Haircuts and Hate: The rise of Australia’s alt-right](#)’, *Background Briefing*, ABC TV News, 14 October 2018.

<sup>34</sup> Julie Nathan, [Report on Antisemitism in Australia 2018](#), Executive Council of Australian Jewry, 25 November 2018, p. 6

<sup>35</sup> Julie Nathan, [Report on Antisemitism in Australia 2019](#), Executive Council of Australian Jewry, 24 November 2019, p. 240

<sup>36</sup> For a detailed profile, see Julie Nathan, [Report on Antisemitism in Australia 2020](#), Executive Council of Australian Jewry, 29 November 2020, pp. 129-131

<sup>37</sup> Brandon Howe, ‘[“We are Racists”: Neo-Nazi Activity Documented Around Campus](#)’, *ANU Observer*, 12 September 2020

NSN has since progressed to more organised and menacing activities. Over the Australia Day long weekend in January 2021, a group of 38 men associated with NSN, wearing black t-shirts bearing Celtic-style symbols and chanting white supremacist slogans, camped in the Grampian mountains in Victoria, carried out a Ku Klux Klan style burning of a wooden cross and intimidated local residents and other tourists by marching in force through a local town and meeting the stares of onlookers with Hitler-salutes.<sup>38</sup> The ‘camping trip’ was reportedly organised by Lads Society’s Thomas Sewell and a security guard, Stuart von Moger. Sewell claimed that its purpose was to usher in a new organised white supremacist grouping, the “European Australian Movement”.<sup>39</sup>

AR previously conducted similar ‘camping trips’ to remote areas involving “*martial training and creating murals*”,<sup>40</sup> but these earlier events involved much smaller numbers of participants who were more loosely organised and did not engage in intimidation of members of the general public and the police.

### **2.1.3 White supremacism and far-right extremism in Australia – conclusions and recommendations**

Similar to far-right groups in the US, NSN, AR and the Lads Society appear to be far better organised and less prone to in-fighting and internal schisms than earlier far-right racist groups, although this could change. They have been adept at selectively recruiting individuals, although they do not seek to build a mass movement, but rather aim to become an elite vanguard. The number of participants in their publicly-known activities has grown. These activities have escalated in seriousness and seem calculated to foment hatred and strife in Australia between different ethnic communities and different religious communities, and to intimidate the general public and the police. The activities include assembling in large groups, wearing military-style clothing and army-style boots and packs, chanting racist hate-slogans, giving Hitler-salutes threatening onlookers, and posting online images of the police who confront them as well as their name badges.

It is especially concerning to note the apparent presence within these groups of a licensed security guard and former army personnel who have had training in the use of weapons and various forms of combat, and are capable of maintaining group discipline. The recruitment of people with such backgrounds boosts the capacity of NSN to engage in violent activities in the future. If any group were to plan to seize political power in Australia by force, this looks very much how any such attempt would begin.

Offences already exist under State and Territory criminal laws to deal with these kinds of activities, even if the activities fall short of acts of violence. For example, those who participated in the NSN ‘camping trip’ to the Grampians could conceivably have been prosecuted under sec-

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<sup>38</sup> Nick McKenzie and Joel Tozer, ‘[Neo-Nazis go bush: Grampians gathering highlights rise of Australia’s far right](#)’, *Sydney Morning Herald*, 27 January 2021.

<sup>39</sup> *Ibid.*

<sup>40</sup> Julie Nathan, [Report on Antisemitism in Australia 2017](#), Executive Council of Australian Jewry, 26 November 2017, pp. 7, 101

tion 10 of the *Unlawful Assemblies and Processions Act 1958* (Vic)<sup>41</sup> for participating in an unlawful assembly, and possibly for committing other statutory and common law offences.

What appears to have been lacking thus far is the political will to implement a zero tolerance policy that will strictly enforce the current law with respect to such behaviour, and to provide the structures and resources within law enforcement agencies necessary to back up such a policy. The latter would entail extending the scope of existing counter-terrorism commands within law enforcement agencies and resourcing specialised units within those commands, to the extent that these do not already exist, to focus on particular extremist groups and individuals who have the potential to engage not only in terrorism but also in hate crimes at a lower level than terrorism, ranging from graffiti and offensive language through to serious physical violence.

Currently, special laws exist in each State and Territory to address organised crime and, in particular, outlaw motorcycle gangs.<sup>42</sup> These laws and the specialised police units which have been formed to enforce them, have met with considerable success in disrupting and breaking up the activities of criminal gangs.<sup>43</sup> Such laws could be adapted to provide law enforcement agencies with extra powers to meet the challenge of dealing with extremist groups.

We do not accept the proposition that extremist groups which have not, as yet, engaged in acts of violence represent a lesser threat to Australian citizens and society than criminal gangs. . The lesson of history is that hate speech, hate-fuelled behaviour and associated thuggery and menace of the kind engaged in by movements with an extremist ideology, as described in this submission, have an *inherent* propensity towards violence. Calls for a “racial holy war”, to “legalise the execution of Jews”, to encourage gay suicides and to overthrow Australia’s constitutional order by force and replace it with “the Hitlers you have been waiting for”, are inherently conducive to violence, and have already in certain instances in the past led to violence, as noted earlier in this submission. As was observed by a former Chief Justice of the High Court of Australia:

*“...the protection of any form of liberty as a social right within a society necessarily involves the continued existence of that society as a society. Otherwise the protection of liberty would be meaningless and ineffective. It is consistent with the maintenance of ... liberty for the*

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<sup>41</sup> The relevant parts of the section provide: “*Any body of persons who...assemble in any ... place within Victoria for the purpose of ... demonstrating any...religious or political distinction or difference [between any classes of Her Majesty's subjects], and who ...have publicly exhibited any banner emblem flag or symbol the display whereof may be calculated to provoke animosity between Her Majesty's subjects of different religious persuasions...shall be and be deemed to be an unlawful assembly; and every person present thereat shall be and be deemed to be guilty of an indictable offence and shall upon conviction thereof be liable to be punished accordingly: Provided that nothing in this Part shall extend to any procession or assemblage held in the course of any election of any member to serve in the Parliament of Victoria.”*

<sup>42</sup> Although many of these laws have since been amended so as to confer police with augmented powers, a useful summary appears in Lorana Bartels, ‘[The status of laws on outlaw motorcycle gangs in Australia](#)’, *Australian Institute of Criminology*, 12 June 2009. ISSN 1836-9111

<sup>43</sup> Duncan McNab, ‘[Strike Force Raptor: behind the specialist police taskforce busting outlaw bikie gangs](#)’, *7 News*, 1 December 2019.

*State to restrain actions and courses of conduct which are inconsistent with the maintenance of civil government or prejudicial to the continued existence of the community.”*<sup>44</sup>

We believe the cost of addressing extremist behaviour in the future will only increase if the behaviour is allowed to continue unchecked, and will potentially be much greater than the cost of breaking up criminal gangs. The potential for violence increases if the behaviour of these groups is verbally objected to by members of the public, who have every right to voice objections.

If enacted, a national law analogous to the State and Territory laws applicable to criminal gangs could empower the Minister for Home Affairs to designate an organisation as an extremist organisation if satisfied that:

- members of the organisation associate together for the purpose of organising, planning, facilitating, supporting or engaging in activities which are calculated to provoke animosity between groups or individuals in Australia on the basis of race, religion, gender, sexual preference, gender identity or disability; and
- the organisation or its members represent a risk to public peace, safety or order.

The legislation should provide that once an organisation is designated as an extremist organisation by the Minister, Federal, State and Territory law enforcement agencies will have extensive powers to disrupt and terminate its activities, analogous to the powers available to police under the current criminal gang laws. These would include powers to obtain control orders against members of designated organisations and persons who regularly associate with them, as well as enhanced powers of investigation, search and seizure, powers to issue take-down orders to ISPs and social media platform providers, and powers to obtain public safety orders and firearms control orders. The legislation should also include anti-consorting provisions making it an offence to associate with convicted offenders after receiving an official warning from a law enforcement agency.

A declaration designating an organisation as an extremist organisation will need to be updated regularly if the organisation follows the pattern of previous white supremacist groups and disbands and is replaced by a phoenix organisation with a similar ideology and membership.

Finally, given that certain prominent leaders of white supremacist groups have been current or former security guards or members of the Australian Defence Forces, and in order to prevent the infiltration of law enforcement agencies by group members or supporters, the rules governing qualification for entry to any of these vocations should be reviewed so as to expressly exclude such persons, and to provide for the peremptory revocation of the licence of any such person who is a security guard, and the termination of the service of any such person who is a member of a law enforcement agency or of the Australian Defence Forces.

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<sup>44</sup> [Adelaide Company of Jehovah's Witnesses Incorporated v Commonwealth \("Jehovah's Witnesses case"\)](#) [1943] HCA 12; (1943) 67 CLR 116 (14 June 1943) *per* Latham CJ at [10]

## **Recommendation 1**

- 1.1 Enact a national law analogous to current State and Territory laws applicable to criminal gangs empowering the Minister for Home Affairs to designate an organisation as an extremist organisation if satisfied that:**
  - members of the organisation associate together for the purpose of organising, planning, facilitating, supporting or engaging in activities which are calculated to provoke animosity between groups or individuals in Australia on the basis of race, religion, gender, sexual preference, gender identity or disability; and
  - the organisation or its members represent a risk to public peace, safety or order.
- 1.2 The new law should confer Federal, State and Territory law enforcement agencies with powers to obtain control orders against members of designated organisations and persons who regularly associate with them, as well as:**
  - enhanced powers of investigation, search and seizure
  - powers to issue take-down orders to ISPs and social media platform providers; and
  - powers to obtain public safety orders and firearms control orders in respect of designated organisations, their members and persons who regularly associate with them.
- 1.3 The legislation should also include anti-consorting provisions making it an offence to associate with convicted offenders after receiving an official warning from a law enforcement agency.**
- 1.4 Declarations designating organisations as extremist organisations should be regularly updated, as such organisations dissolve and re-form.**
- 1.5 Extend the scope of existing counter-terrorism commands within Federal, State and Territory law enforcement agencies by establishing and resourcing specialised units within those commands, to the extent that these do not already exist, to focus on particular extremist groups and individuals who have the potential to engage not only in terrorism but also in hate crimes at a lower level than terrorism, ranging from graffiti and offensive language through to serious physical violence.**
- 1.6 Law enforcement agencies should pay particular attention to potential offenders who are on the fringes of declared groups or who have only loose connections with them, especially via online platforms.**

## **Recommendation 2**

**To prevent the infiltration of the security industry, law enforcement and intelligence agencies and the Australian Defence Force by persons who have engaged in the activities of a designated organisation, review the rules governing qualification for entry to each of these vocations so that they expressly exclude such persons, and provide for the peremptory revocation of the license of any such person who is a security guard, and the termination of the service of any such person who is a member of a law enforcement or intelligence agency or of the Australian Defence Forces.**

Whilst these recommendations address the manifestations of far-right extremist and white supremacist activity in Australia, they do not address the underlying susceptibility of some people, who are dissatisfied with their position and place in society or have a delusional sense of entitlement, to embrace the falsehoods and false promises of white supremacist ideology and be recruited into white supremacist groups. These are matters which need to be addressed in our education system, which is dealt with in section 6 of this submission.

## **2.2 Islamist extremism**

### **2.2.1 The global context**

The distinctions between Islam and Islamism and between the religious concept of *jihad* and jihadism, have been described as follows:

*“Islam is a religion, and like any other it is internally diverse. But Islamism is the desire to impose any version of Islam on society. Hence, Islamism is Muslim theocracy. And where jihad is a traditional Islamic idea of struggle, jihadism is the use of force to spread Islamism.”<sup>45</sup>*

However, the same author acknowledges that the distinction is not cut-and-dried, and that it is as disingenuous to argue that Islamism has nothing to do with Islam as it is to argue that it is Islam *per se*. Islamism “has something to do with Islam. Not nothing, not everything, but something. If you’re going to argue with a jihadist...you’ll be discussing Islamic texts.”<sup>46</sup>

The concept of separation of religion and State and of faith and politics is far from universally accepted. It is grounded specifically in the Christian Scriptures which exhort followers to *“Render unto Caesar the things that are Caesar’s, and unto God the things that are God’s”* (Matthew 22:21). There is no equivalent hard-and-fast distinction in Islam. Contemporary Islamist movements have gone a step further in dedicating themselves to the establishment of forms of government in which the people who are governed are *not* sovereign, and instead “God” is supposedly sovereign through the medium of a dictatorship either in the form of a Caliphate or a dictatorship of Muslim clerics.

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<sup>45</sup> Maajid Nawaz, ‘[Muslims and non-Muslims must openly denounce Islamism](#)’, *The Australian*, 21 November 2015.

<sup>46</sup> *Ibid.*

The most extreme examples of the realisation of this goal are the Islamic Republic of Iran and the now defunct “Islamic State” caliphate.

After the 1978-9 revolution in Iran, the notion of *velayat-e faqih* (guardianship of the Islamic jurist), which is derived from the minority *Shi'a* branch of Islam, was made the lynch-pin of the Iranian constitution.

*“The concept of velayat-e faqih (in Farsi, or wilayat al-faqih in Arabic) transfers all political and religious authority to the Shia clergy and makes all of the state’s key decisions subject to approval by a supreme clerical leader, the vali-e faqih (guardian Islamic jurist). The supreme clerical leader (the faqih) provides guardianship (velayat) over the nation and, in doing so, ensures the top-down Islamisation of the state.”*

*... “[E]lections and popular participation are of little relevance, as electoral outcomes depend on the supreme leader’s approval. Neither state officials nor the public have a say over the conduct of the supreme leader, and opposition to him is deemed to be disobedience to God.”<sup>47</sup>*

The current regime in Iran is sustained by a strong nationalist streak in the country’s political culture and a deep popular resentment against systematic western intervention in Iran’s internal affairs over several decades prior to the Islamic revolution. Overall, however, the regime survives principally by means of a thorough-going system of internal repression which is extraordinary in its brutality.

Further, the Iranian regime does not confine itself to imposing its system of government within Iran. Through the Iranian Revolutionary Guard Corps and proxy organisations in other countries, most notably the Lebanon-based Hizballah terrorist group, the regime seeks to use violence and intimidation to spread its sphere of influence beyond Iran’s borders. It has had some success in doing so by exploiting the conflicts in Iraq, Syria and Yemen, and through Hizballah’s terrorist activities around the world. Hizballah’s so-called ‘External Security Organisation’ has since 2003 been listed as a terrorist organisation in Australia. (See section 3 of this submission below).

“Islamic State” (IS) is a terrorist organisation with an ideology it claims is rooted in the doctrines of the *Salafist* traditions of the majority *Sunni* branch of Islam. It has existed under a series of names since its formation in 1999, and has been listed as a terrorist organisation in Australia since 2005. The stated goal of IS is to establish itself as a caliphate, an Islamic theocracy governed by a ‘pure’ Islam, free of all non-Islamic influences, and led by a group of religious authorities under a supreme leader, the caliph. Initially the caliphate is to be established in Muslim-majority lands, but ultimately it is to be imposed globally so that it “covers all eastern and western extents of the Earth”,<sup>48</sup> and anyone who shows signs of opposition is to be killed with extreme brutality.

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<sup>47</sup> Kasra Aarabi, ‘[What Is Velayat-e Faqih?](#)’ Institute of Global Affairs, 20 March 2019.

<sup>48</sup> From the 5th edition of *Dabiq*, the Islamic State’s English-language magazine, quoted by Thomas Joscelyn in testimony to the US House Committee on Foreign Affairs Subcommittee on Terrorism, Non-proliferation, and

IS exploited the chaos of the civil war in Syria to seize large tracts of territory in the north and north-east of the country in 2013. In early 2014 an offensive by IS forces drove Iraqi government forces out of key cities in western Iraq, culminating in the capture of Mosul. The people living in the areas it conquered, especially non-Arabs and non-Muslims, were subjected to ethnic cleansing, mass beheadings, torture, enslavement and rape. IS videoed its atrocities and disseminated the videos by social media. In June 2014, IS adopted its current name and declared the establishment of a caliphate. The group's declaration of a new caliphate and use of the name "Islamic State" were ridiculed by most Muslim clerics and recognised Muslim scholars.<sup>49</sup>

Nevertheless, the perceived success of IS in conquering territory and establishing a caliphate, and the ruthless brutality of its methods, attracted recruits mainly from among young Muslim men around the world. The then Director-General of the Australian Security Intelligence Organisation, David Irvine, estimated that around 150 Australians were believed to be supporting or recruiting for the conflicts in Syria and Iraq, or were actively involved in them, albeit not exclusively for IS.<sup>50</sup> As to their motivation, Mr Irvine noted that many jihadis do not, as some believe, come from deprived socio-economic backgrounds, and concluded that "*nobody has actually come up with a common denominator per se, beyond the notion of religious conviction.*"<sup>51</sup>

In subsequent years, IS operatives, and individuals and groups professing allegiance to IS, carried out numerous horrific terrorist attacks against civilian targets in the UK, France, Belgium, Germany, other parts of Europe and other continents, including Australia. The military losses suffered by IS, the dissolution of its caliphate in 2019 and the killing of its 'caliph' and other senior figures in 2020 and 2021 mean that IS is injured but not defeated, and its attacks in Syria and Iraq have continued.<sup>52</sup> According to Under-Secretary-General of the United Nations Counter-Terrorism Office, Vladimir Voronkov, more than 10,000 Islamic State fighters are estimated to remain active in Iraq and Syria and their attacks have actually increased during the COVID-19 pandemic.<sup>53</sup> IS also remains active in Africa. In Europe, Voronkov expressed concern about "internet-driven, home-grown terrorist radicalisation," citing three IS-inspired attacks in France and two in the UK, and about radicalisation and failed rehabilitation among prisoners in gaols.<sup>54</sup>

## 2.2.2 Islamism and Jihadism in Australia

Contemporary Islamism and Jihadism in Australia began in 2000 when prominent figures within the Jihadi terrorist groups Jemaah Islamiyah and al Qaeda (whose Iraqi branch was a fore-runner to IS) plotted to attack the Israeli embassy in Canberra and Consulate in Sydney during

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Trade, reproduced in '[US counterterrorism efforts in Syria: A winning strategy?](#)' *Long War Journal*, 29 September 2015.

<sup>49</sup> '[Muslims Against ISIS Part 1: Clerics & Scholars](#)', *Wilson Centre*, 24 September 2014

<sup>50</sup> Michelle Grattan, '[In conversation with ASIO chief David Irvine](#)', *The Conversation* 15 August 2014.

<sup>51</sup> *Ibid.*

<sup>52</sup> Anthony H. Cordesman, '[The Real-World Capabilities of ISIS: The Threat Continues](#)', *Centre for Strategic and International Studies*, 9 September 2020.

<sup>53</sup> Edith M. Lederer, '[UN: Over 10,000 Islamic State fighters active in Iraq, Syria](#)', *Associated Press*, 25 August 2020.

<sup>54</sup> *Ibid.*

the Olympic Games.<sup>55</sup> In 2002, a plot by al Qaeda to carry out a devastating attack on the Jewish community's main building in Melbourne was uncovered.<sup>56</sup>

In 2003, a cell controlled by the Jihadi terrorist group *Lashkar-e-Taiba* in Pakistan was uncovered in Sydney while planning to attack the city's electricity grid.<sup>57</sup>

After that incident, jihadi activity in Australia “shifted from being funded and directed by international organisations, to homegrown self-starting plots,” a shift that was “predominantly due to the removal of key facilitators with significant overseas connections from within the Australian Jihadist network”.<sup>58</sup>

The most notorious example of homegrown self-starting Jihadism was the network in Melbourne and Sydney uncovered in November 2005 in Operation Pendennis. The network was headed by radical Muslim cleric Abdul Nacer Benbrika. In 2009 he and seven followers were found guilty of planning a terrorist attack on Australian soil.<sup>59</sup>

Another Jihadi group was apprehended during Operation Neath in 2009 while planning a suicide attack on Holsworthy Army Barracks in Sydney. All five of the men who were charged over the plot had met at Melbourne's Preston mosque. Three were convicted. The Prosecution told the court that a "fatwa" permitting the attack had been sought from a religious authority in Somalia because the men's Australian religious leaders were opposed to violence.<sup>60</sup>

After Operation Pendennis and Operation Neath, jihadis in Australia ceased to operate as disciplined cells, and functioned instead as a loosely interconnected network of individuals transcending operational cells, a shift which was not consistent with jihadi behavior in comparable countries internationally.<sup>61</sup>

Indeed, from 2014 onwards jihadi activity in Australia was no longer a group-focused activity at all but was instead carried out by ‘lone actor’ operators, although they may have been influenced by, and in contact with, others in Australia or overseas, especially Islamic State in Syria. Most of these actors have been caught while planning attacks, but some attacks have progressed from planning to implementation. The most notable of these:

- On 23 September 2014, 18-year-old Abdul Numan Haider attacked two counter-terrorism police officers with a knife outside the Victoria Police Endeavour Hills police station located in Endeavour Hills in Melbourne. He was then shot dead.<sup>62</sup>

<sup>55</sup> [R v Roche WASCA 4](#) (14 January 2005), para [40] *per* Templeman J.

<sup>56</sup> ‘Terror cell planned attack on Jewish centre’, *The Age*, 14 June 2004

<sup>57</sup> Shandon Harris-Hogan, ‘[Violent extremism in Australia: An overview](#)’, *Australian Institute of Criminology, Trends and Issues* paper no. 491, March 2017 (ISSN 0817-8542)

<sup>58</sup> *Ibid.*

<sup>59</sup> Alison Caldwell, ‘[Two terrorist cells worked together to plot attacks](#)’, *ABC News*, 20 September 2011.

<sup>60</sup> ‘[Three found guilty of Holsworthy terror plot](#)’, *ABC Radio 'PM' program*, 23 December 2010.

<sup>61</sup> Shandon Harris-Hogan, ‘[The Australian Neojihadist network: Origins, evolution and structure](#)’, *Dynamics of Asymmetric Conflict*, (2012), 5:1, 18-30, cited in Shandon Harris-Hogan, ‘[Violent extremism in Australia: An overview](#)’, *Australian Institute of Criminology, Trends and Issues* paper no. 491, March 2017 (ISSN 0817-8542).

<sup>62</sup> Dan Oakes, ‘[Melbourne shooting: What we know about Abdul Numan Haider, shot dead after stabbing anti-terrorism officers at Endeavour Hills](#)’, *ABC News*, 25 September 2014.

- On 15–16 December 2014 a lone gunman, Man Haron Monis, held 18 people hostage at the Lindt chocolate café in Martin Place, Sydney. Some of the hostages were forced to display an Islamist flag which Monis had brought with him. When Monis shot dead the manager of the café, police stormed the premises and shot Monis dead. Another hostage was unfortunately killed by the police gunfire.<sup>63</sup>
- On 2 October 2015, Farhad Khalil Mohammad Jabar, a 15-year-old boy, shot and killed Curtis Cheng, an unarmed police civilian finance worker, outside the New South Wales Police Force headquarters in Parramatta, Sydney, Australia, before he was in turn shot by police. Shortly prior to the shooting Jabar had attended a mosque and heard a lecture by the Islamist extremist group Hizb ut-Tahrir.<sup>64</sup>
- On 10 September 2016, a resident of Minto, Sydney, Ihsas Khan, stabbed his elderly neighbor multiple times in a knife attack that Khan said had been inspired by Islamic State. Khan described the attack as like "eating a chocolate bar". He said he had bought the knife to kill Jewish students at the University of Sydney. He became the first person in Australia to be sentenced for committing a terrorist act and was sentenced to 36 years imprisonment with a non-parole period of 27 years.<sup>65</sup>
- One of the two men who were acquitted of involvement in the planned attack on Holsworthy army base went on to murder a receptionist and hold a prostitute hostage during a siege in Brighton in Melbourne on 5 June 2017 before being killed in a shootout with a police tactical unit. Three police officers were wounded. Police called the siege an act of terrorism.<sup>66</sup>
- On 9 November 2018, a lone male attacker, Hassan Khalif Shire Ali, drove his car packed with "barbecue-style" gas cylinders into some shops in Bourke Street Melbourne, starting a fire. He then emerged from the car and stabbed three people, one fatally, before being fatally shot by Victoria Police. The police said the incident was "terrorism-related". Islamic State claimed that Ali was one of its "fighters".<sup>67</sup> (Hassan's 21-year-old younger brother, Ali Khalif Shire Ali, was arrested in November 2017 for planning to commit a mass shooting at Melbourne's Federation Square on New Year's Eve. He pleaded guilty and was ultimately sentenced to sixteen years imprisonment, with a non-parole period of twelve years).<sup>68</sup>

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<sup>63</sup> For a full account of the incident and an analysis of police failures, see State Coroner of New South Wales, '[Inquest into the deaths arising from the Lindt Café Siege: Findings and Recommendations](#)', *Coroners Court of New South Wales*, May 2017.

<sup>64</sup> Georgina Mitchell, '[Parramatta shooting: Teen gunman Farhad Khalil Mohammad Jabar's alleged links to extremist group Hizb ut-Tahrir](#)', *Sydney Morning Herald*, 4 October 2015.

<sup>65</sup> Jessica Cortis, '[Ihsas Khan convicted of stabbing neighbour Wayne Greenhalgh in ISIS rampage](#)', *The Australian*, 5 June 2019.

<sup>66</sup> Deputy Commissioner Shane Patton, '[Media briefing](#)', *Victoria Police Media Unit*, Victoria Police, 6 June 2017.

<sup>67</sup> '[Melbourne attack: Man shot dead after fire and fatal stabbing](#)', *BBC News*, 9 November 2018.

<sup>68</sup> Kristian Silva, '[Federation Square terror plotter Ali Khalif Shire Ali has sentence increased after prosecutors appeal](#)', *ABC News*, 18 December 2020.

Jihadi activity in Australia has thus evolved from an internationally-organised phenomenon, to nationally-organised, to loosely inter-connected networks, to lone actors with only tenuous links, if any, to others (mainly via online platforms), even if they take their ideology and inspiration from overseas networks. This is the opposite direction to that in which right wing extremist groups have evolved. Accordingly, as is the case with white supremacist groups, a focus on leaders and key members of Islamist and jihadi groups will at best provide only a partial picture of those who have the greatest propensity to engage in violence, and may overlook potential offenders, including lone actors, who are on the fringes of these groups or who have only loose connections with them, especially via online platforms.

The increasing atomisation of jihadism in Australia makes it all the more important for law enforcement agencies to develop workable profiles of individuals who are most susceptible to becoming offenders.

Studies in Australia and overseas indicate that the overwhelming majority of those convicted of jihadi-related offences in Australia are males aged between 18 and 35 years, have no apparent mental health issues, do not have a refugee background, are more likely to be on welfare or do blue-collar work than the average Australian, and are seeking a sense of empowerment and personal glory or status which over-rides any moral compass they may have had.<sup>69</sup> Unlike most of their counterparts from overseas, about 85% of them are married.

There is some contradiction between studies as to the level of education of Australian jihadis compared to those overseas. The Australian Institute of Criminology concluded that:

*“65 percent of the sample [of convicted jihadis] had not finished high school. This contrasts sharply with places like Canada, where most prosecuted jihadists have completed high school. Hence, Australian jihadis on the whole appear less educated than their international counterparts and universities certainly cannot be considered a ‘breeding ground’ for jihadism in Australia.”<sup>70</sup>*

In contrast:

*“Islamist extremists from Australia tend to be better educated, more likely to be employed and have fewer and less serious criminal convictions than a typical European jihadist, according to the Lowy Institute study of 173 Australians alleged to have become foreign fighters or who have been convicted of terrorism offences.”<sup>71</sup>*

### **2.2.3 The global Islamist group Hizb ut-Tahrir (HT) in Australia<sup>72</sup>**

Founded in 1953, and operating in as many as 50 countries, HT seeks to establish an Islamic Caliphate in all Muslim majority countries, and eventually globally, and to constitute it under strict Islamic religious law. The Caliphate would be a theocracy. The will of the people

<sup>69</sup> Michael Safi and Ben Doherty, ‘[Australian jihadis: motivated by status and show no contrition for crimes](#)’, *The Guardian*, 21 November 2019, citing The Lowy Institute, *Typology of Terror*, 2019.

<sup>70</sup> Shandon Harris-Hogan, ‘[Violent extremism in Australia: An overview](#)’, Australian Institute of Criminology, Trends and Issues paper no. 491, March 2017 (ISSN 0817-8542)

<sup>71</sup> Michael Safi and Ben Doherty, ‘[Australian jihadis: motivated by status and show no contrition for crimes](#)’, *The Guardian*, 21 November 2019, citing The Lowy Institute, *Typology of Terror*, 2019.

<sup>72</sup> Information on HT’s doctrine, goals and methods is taken from [The Counter-Extremism Project](#) website.

would be subordinated to the will of the caliph. Non-Muslim subjects would be required to pay additional taxes, would have inferior rights to Muslims and in many instances would be subject to Islamic religious law. Men and women would be segregated except for the purposes of commerce and religious pilgrimages.

HT rejects the concepts of equal rights, democracy, personal freedom, human rights and the rule of secular law, international and domestic. Its rhetoric has frequently been antisemitic, homophobic, and anti-Western. Although the group publicly has claimed that it does not seek to achieve its goals through violent means, group leaders have consistently sought to foster a sense of grievance among impressionable young Muslim men in particular. Individuals affiliated with the group have been linked to violent acts in multiple countries, and HT disingenuously has both distanced itself from, and sought to provide a degree of justification for, their actions. HT has been banned in at least 13 countries, but not in Australia.

HT Australia rejects the legitimacy of Australia's current secular democratic constitutional order in favour of a Muslim caliphate,<sup>73</sup> and has called for Muslim children not to have to sing Australia's national anthem.<sup>74</sup> It is led by Islamist cleric Ismail al-Wahwah. Its media spokesman is Uthman Badar. Al-Wahwah's conduct, in particular, has come under the notice of law enforcement agencies. He reportedly spent time in prison in Jordan in 2018.<sup>75</sup>

On 25 July 2014 al-Wahwah delivered a violent, public diatribe in Australia against Jews, footage of which was uploaded to YouTube at the time, and again on 3 March 2015. Al-Wahwah repeated a range of shop-worn racist tropes about Jews. In Arabic, he accused "*the Jews*" of corrupting the world "*in every respect*", describing them as "*the most evil creature of Allah*" and threatening that:

*"the ember of jihad against the Jews will continue to burn. Judgment Day will not come until the Muslims fight the Jews ... tomorrow you Jews will see what will become of you — an eye for an eye, blood for blood, destruction for destruction. There is only one solution for this cancerous tumour: it must be uprooted and thrown back to where it came from."*<sup>76</sup>

Al-Wahwah subsequently protested that he was referring only to Israel. But his numerous references to "the Jews" as a people belied this excuse.

In another videoed speech made in Australia on or about 16 December 2017 and subsequently uploaded online, al-Wahwah used similarly violent language in reference to Jews, and also towards Muslim leaders who are prepared to accept Israel's right to exist alongside a Palestinian State.<sup>77</sup>

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<sup>73</sup> [The Draft Constitution of the Khilafah State, Hizb ut-Tahrir](#), February 2011.

<sup>74</sup> Saffron Howden, '[Muslim children should not be forced to sing national anthem, says Hizb ut-Tahrir](#)', *Sydney Morning Herald*, 2 November 2015.

<sup>75</sup> Elias Visontay, '[Cleric jailed in Jordan 'failed by Australia', says lawyer](#)', *The Australian*, 1 February 2019.

<sup>76</sup> Taylor Auerbach, '[Hizb ut-Tahrir leader Ismail Alwahwah calls for jihad against Jews in inflammatory video](#)', *Daily Telegraph*, 9 March 2015.

<sup>77</sup> Excerpts from the speech, including the sections here quoted, were uploaded to YouTube by Memri TV on 31 August 2020: <https://www.youtube.com/watch?v=afGZKtDlate>

The speech followed the announcement on 6 December 2017 by the then US President Donald Trump that the United States recognises Jerusalem as the capital of Israel and that he had ordered the planning of the relocation of the US Embassy in Israel from Tel Aviv to Jerusalem. It also referred to the Sixth Extraordinary Session of the Islamic Summit, organised by the Organisation of Islamic Cooperation, and held in Istanbul on 13 December 2017. The summit ended with a final communique condemning the US announcement about Jerusalem and recognising East Jerusalem as the Palestinian capital, but impliedly accepting that the remainder of Jerusalem belongs to Israel.

Al-Wahwah is shown in the video to be saying (translated from Arabic):

*“To the entity of the Jews we say: Do not rejoice...The day will come when you will cry blood. There will be no place for you in Palestine. We extend to you the following words of advice: Whoever among you has any brains should take his passport, leave Palestine and go back to where you came from – Paris, London, Moscow, Poland, Germany and America. Go back to where you came from as invaders, or else you shall meet your fate, and we both know what that means.”*

These words are expressly directed towards the entity of *the Jews* (emphasis added). He calls them “*invaders*”, meaning that he thinks they do not belong in Israel because he thinks they are members of an alien ethnic or faith community. He warns them to “*go back to where you came from... or else you shall meet your fate, and we both know what that means*”. “*What that means*” refers to his statement: “*The day will come when you will cry blood*”, which is a threat that they will suffer violence and death. It is also incitement to violence against members of the same group because the statement necessarily implies that they deserve to suffer violence and death.

Earlier in the same video, al-Wahwah is shown to condemn “*every Muslim ruler*” at the “*Istanbul summit*”, because these rulers “*recognise a Jewish State, or entity, on 80% of the land of Palestine, with West Jerusalem as the capital of the Jews, while (the Palestinians) are given only East Jerusalem*”, they deserve stabbing and beheading: “*...the very knife with which you cut Palestine...will be turned against you and will cut your bodies and behead you. The knife will sever your heads from your bodies...*”

The references to Israel as “*the entity of the Jews*” and Jerusalem as “*the capital of the Jews*”, rather than the capital of Israel, show that al-Wahwah readily conflates a hatred for Israel with a hatred for Jews, and his rhetoric promotes an eliminationist attitude toward both. His words also carry an unmistakeable threat that Jews anywhere who manifest support for Israel’s right to exist in peace and security are to be considered legitimate targets for violence.

#### **2.2.4 Islamism in Australia – conclusions and recommendations**

Successive Australian governments have met the challenge of Islamist terrorism by enacting more stringent national security laws and by improved resourcing of intelligence and law enforcement agencies. These efforts have been assisted considerably by the close co-operation with authorities of Muslim communities in Australia.<sup>78</sup> Understandably, there has been less

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<sup>78</sup> Michelle Grattan, ‘[In conversation with ASIO chief David Irvine](#)’, *The Conversation* 15 August 2014.

legislative and associated activism by Australian authorities in addressing less serious forms of Islamist extremism.

Yet forms of Islamist extremism which stop short of terrorism can be just as insidious and as destructive of social cohesion as forms of far-right extremism and white supremacism which stop short of terrorism, and for essentially the same reasons. Both forms of extremism are dedicated to the replacement of Australia's democracy, freedoms and rights by a totalitarian order enforced by brutal repression. Both use hate speech, hate-fuelled behaviour and associated thuggery and menace to promote their dystopian vision of society. Both seek to set Australian against Australian on the basis of ethnicity, religion, gender, sexual preference, gender identity or disability. Both carry within them a clear propensity for violence, and an intimidatory menace towards any sources of opposition they encounter, including from law enforcement officials.

The recommendations we make with respect to sources of Islamist extremism in Australia which stop short of terrorism are therefore the same as our Recommendations 1 and 2. We have framed those recommendations to apply equally and without distinction to groups and individuals engaged in both forms of extremism.

### **2.3 The impact of the COVID-19 pandemic on extremist activity in Australia**

Although the COVID-19 pandemic has brought in its wake restrictions on gatherings and movement of people, which limits the opportunities for real world, in-person hate-motivated activities, these changes have also had enormous adverse economic consequences. With border closures and lockdowns, businesses in sectors such as retail, travel and tourism, have seen their volumes and revenues slashed, and many have shut down, producing rising unemployment, reduced savings and massive increases in government spending and deficits. These developments have created a climate of fear and economic insecurity which has exacerbated the atmosphere of political and social polarisation that existed even before the onset of the pandemic. Times of social and economic stress tend to foster conspiracy theories, mass irrationality and rising levels of racism – including antisemitism – and in Australia this has been most evident in posted items and comments on social media platforms, which have become a toxic milieu for the expression of all kinds of hatreds and scare-mongering. The impact on antisemitism is detailed in the ECAJ's Annual Report on Antisemitism in Australia for 2020.<sup>79</sup> The pandemic did not create any of these phenomena, but it has highlighted how prone even a stable democracy like Australia can be to their destructive effects on social cohesion.

### **3. The Commonwealth's terrorist organisation listing laws (Terms of Reference - para 3a) – listing of Hizballah (also transliterated as 'Hezbollah')**

At present, the Australian Government lists certain organisations as terrorist organisations by regulations made under Division 102 of the *Criminal Code Act 1995* (Cth). Offences which apply in relation to each listed organisation include membership of, associating with, providing support to, and recruiting for the organisation.

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<sup>79</sup> Julie Nathan, [\*Report on Antisemitism in Australia 2020\*](#), Executive Council of Australian Jewry, 29 November 2020.

Before an organisation is listed, the Minister for Home Affairs must be satisfied on reasonable grounds that the organisation:

- *is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a terrorist act, or*
- *advocates the doing of a terrorist act.*<sup>80</sup>

In making a determination, the Minister is supported principally by information and advice from ASIO and the Department of Home Affairs. Other Australian Government agencies, including the Department of Foreign Affairs and Trade, the Department of the Prime Minister and Cabinet, and the Australian Federal Police (AFP), may also be consulted about listing decisions, although their roles in the process are more limited.<sup>81</sup>

The legislation itself does not provide for the kinds of matters which the Minister might take into consideration in making a determination. This is understandable in view of the wide variety of circumstances that may be relevant. On the other hand, the inclusion of a non-exhaustive list of matters that the Minister may take into account could help to insulate any decision against legal challenge, given that judicial review of the legality of a decision to list an organisation is available in the courts under section 75(v) of the Constitution and section 39B of the Judiciary Act 1903.

We believe that one factor that should be taken into account is whether an organisation has been listed as a terrorist organisation by other countries, especially countries with which Australia has a close intelligence relationship. In the case of at least one organisation, namely Hizballah, failure to give due weight to the way in which like-minded countries have designated a particular organisation has resulted in a decision by Australia that is widely seen as anomalous.

In Australia, the so-called political wing of the group and the internal section of Hizballah’s “military wing” are free to operate under the current listing. Only the so called “External Security Organisation” of Hizballah (the ‘external’ part of its military wing) is listed.

With the exception of New Zealand, all of Australia’s partners in the Five Eyes intelligence-sharing alliance (namely the US, Canada and more recently the UK) have declared the whole of Hizballah to be a terrorist organisation.

New Zealand has designated the entire military arm of Hizballah as a terrorist organisation, not merely its “External Security Organisation”. In 2018, the Parliamentary Joint Committee on Intelligence and Security recommended that Australia consider upgrading its ban so as to include at least the entire military wing of Hizballah, not just its External Security Organisation.

In addition to Canada, the US and the UK, other countries which have designated the whole of Hizballah as a terrorist organisation include Japan, the Netherlands, Israel, Kosovo and Germany.

The ECAJ and other organisations in Australia have long argued that by listing only Hizballah’s External Security Organisation as a terrorist organisation, rather than Hizballah as a whole,

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<sup>80</sup> Paragraph 102.1(2) *Criminal Code* 1995 (Cth)

<sup>81</sup> ‘Role of Commonwealth Agencies’, [Protocol for listing terrorist organisations](#)

Australia has been endorsing a fiction. In reality, there is a seamless integration between all facets of the organisation in chain of command, finances and personnel.

Hizballah leaders themselves have openly and repeatedly declared that no substantive separation exists between its different internal sections. Muhammad Fneish, senior Hezbollah operative and a Hezbollah MP in the Lebanese Parliament stated on Hizballah's own media outlet: "*I can say that the military wing and the political wing of Hezbollah cannot be separated*".<sup>82</sup>

In 2013, Mohammad Ra'ad, head of Hezbollah's parliamentary delegation, said: "*The Hezbollah military wing is a lie invented by the Europeans because they feel a need to communicate with us and they want to make a delusional separation between the so-called military and political wings.*"<sup>83</sup>

Hezbollah's second-in-command, Naim Qassem, has said: "*The same leadership that directs the parliamentary and government work also leads jihad actions in the struggle against Israel.*"<sup>84</sup>

Hizballah from its inception has glorified, promoted and carried out acts of terrorism, not only in Lebanon but in various parts of the world. It was responsible for the bombings of the Israeli Embassy in Buenos Aires in 1992, which killed 29 people, the AMIA Jewish Community Centre in that city in 1994 which killed 85 people, and an Israeli tourist bus in Burgas, Bulgaria, in 2012, which killed 6 people. A Lebanese-Australian man was one of those convicted for the latter.<sup>85</sup> Several hundred other civilians were maimed or wounded in these attacks.

Hizballah is prosecuting a long war of annihilation against the State of Israel and it sees Jewish communities everywhere as targets of opportunity. It appears that no country is immune from possible future terrorist attacks by Hizballah and that preparatory activities are ongoing in many parts of the world. Hossam Yaakoub, a Hizballah member arrested in Cyprus in 2012, told Cypriot Police: "*I was just collecting information about the Jews. This is what my organisation is doing, everywhere in the world.*"<sup>86</sup>

As early as 2001, a prominent academic named Hizballah as one of the groups which have terrorist support structures in Australia, noting that "*they disseminate propaganda, they raise funds, as well as some groups have procured dual technologies in Australia to support their military effort, their terrorist effort, in their own theatres of conflict.*"<sup>87</sup> This assessment of Hizballah as a terrorist threat in Australia received support in 2003 from the then Federal Attorney General Daryl Williams, who confirmed that the assessment was based on intelligence from Australia's security and intelligence agencies, although for obvious reasons he refused to divulge specific details.<sup>88</sup>

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<sup>82</sup> Al-Manar, 18 January 2002.

<sup>83</sup> Augustus Richard Norton, *Hezbollah: A Short History*, 3<sup>rd</sup> edition, (Princeton and Oxford: Princeton University Press, 2018), ISBN 978-0-691-18088-5, p.173

<sup>84</sup> Borzou Daragahi, '[Lebanon's Hezbollah savors increasing legitimacy](#)', *Los Angeles Times*, 13 April 2009.

<sup>85</sup> '[Bulgaria court convicts two over 2012 Burgas bus attack on Israelis](#)', *BBC News*, 21 September 2020.

<sup>86</sup> '[Elaborate surveillance operation raises concerns about broader Hezbollah attacks](#)', *Washington Post*, 27 February 2013.

<sup>87</sup> Dr Rohan Gunaratna, [Interview with Jana Wendt](#) on SBS 'Dateline' program, 25 September 2001 (updated 23 August 2013).

<sup>88</sup> Interview on ABC 'AM' program on 27 May 2003 and [replayed](#) on 'The World Today' program.

It was on this basis that Hizballah was first listed as a terrorist organisation in Australia, although the listing was limited to its External Security Organisation. Since 2003, Hizballah has grown in size and capabilities, especially since its active participation in the Syrian civil war, in which armed Hizballah units were instrumental in keeping the al-Assad dictatorship in power in the face of a widespread popular uprising.<sup>89</sup> Hizballah has been authoritatively described as “*the world’s most heavily armed non-state actor*”.<sup>90</sup>

In addition to the threat of conducting terrorist operations, Hizballah’s official television station, Al-Manar TV, disseminates content that includes antisemitic conspiracy theories, glorification of terrorism and incitement to violence.

Following a 14-month-long investigation by the Australian Communications and Media Authority (ACMA) into Al-Manar’s satellite transmissions into Australia, which found breaches of regulatory requirements prohibiting terrorist related material, as well as racial vilification and hate speech, the *Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 20011* and the *Broadcasting Services (Anti-terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2011* were introduced, replacing the 2008 versions of those instruments.<sup>91</sup> The 2011 standard differs from the 2008 standard by prohibiting expressly the transmission of a program in Australia that advocates the doing of a terrorist act.

Given this history, the ECAJ strongly believes that the activities of Hizballah as a whole represent a security threat, a threat to social cohesion and a crime risk to all Australians, and to the Australian Jewish community in particular. We have therefore advocated for some time that Australia list the whole of Hizballah as a terrorist organisation, as have the other like-minded countries referred to previously.

The shortcomings of listing only a part of Hizballah as a terrorist organisation were highlighted in 2020 by the example of Germany. On 30 April 2020 Germany banned all activity by Hizballah, and carried out police raids on premises associated with the group, following reports that some Hizballah affiliates had been stashing quantities of ammonium nitrate, a material used to make explosives, in various warehouses in the south of Germany.<sup>92</sup> Until that date, the so-called political wing of Hizballah was able to operate on German soil while only its so-called military arm was banned.<sup>93</sup>

In our view the need to prove that a particular activity relates to a designated part of an organisation, and not simply to the organisation itself, places an unwarranted burden on law enforcement agencies.

Because of the artificiality of Hizballah’s internal distinctions, the reliance on those distinctions for listing purposes potentially hamstrings Australia’s security and law enforcement agencies in

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<sup>89</sup> Kali Robinson, ‘[What is Hezbollah?](#)’, *Council on Foreign Relations*, 1 September 2020.

<sup>90</sup> Shaan Shaikh, ‘[Hezbollah’s Missiles and Rockets](#)’, *Center for Strategic and International Studies*, 5 July 2018.

<sup>91</sup> ACMA file reference 2011/318.

<sup>92</sup> ‘[Mossad gave Berlin intel on Hezbollah ops on German soil ahead of ban — report](#)’, *Times of Israel*, 2 May 2020.

<sup>93</sup> ‘[Hezbollah: Germany bans and raids Islamist group](#)’, *BBC News*, 30 April 2020.

protecting Australians from future terrorist activities by Hizballah of the kind they have carried on in other parts of the world.

### **Recommendation 3**

**The entire Hizballah organisation should be listed as a terrorist organisation by a regulation made under Division 102 of the *Criminal Code Act 1995* (Cth).**

We note that the review of the listing of Hizballah in Australia is due to be finalised by May 2021.

**4. The role and influence of radical and extremist groups, which currently fall short of the legislative threshold for proscription, in fostering disharmony in Australia and as a conduit to persons on a pathway to extremism (Terms of reference – para 3c)**

In section 2.1.2 of this submission we have described the history, role and influence of white supremacist and far-right extremist groups and individuals in Australia, and in section 2.1.3 we have focused on the ideology, aims and *modus operandi* of National Socialist Network, its predecessor, Antipodean Resistance, and the closely related Lads Society.

In section 2.2.2 of this submission we have described the history, role and influence of Islamist and jihadi groups and individuals in Australia, and in section 2.2.3 we have focused on the ideology, aims and *modus operandi* of Hizb ut-Tahrir Australia.

Federal, State and Territory laws, with the exception of those in Western Australia, do not seem to be adequate to deal effectively with the kinds of conduct engaged in by these groups.

**4.1 *Criminal Code 1995* (Cth) - Subdivisions C and D of Division 80**

At present, sections 80.2A and 80.2B of the *Criminal Code 1995* (Cth) make it an offence to urge violence against groups or members of groups on the basis of race or religion or nationality, national or ethnic origin or political opinion. These sections were inserted into the *Criminal Code* pursuant to the *National Security Legislation Amendment Act 2010* (Cth).

Both sections require a prosecutor to prove *inter alia* two *mens rea* elements, namely that the accused:

- intentionally urged another person, or a group, to use force or violence against the targeted group or supposed member of the targeted group; and
- did so intending that force or violence will occur.

Intention is an essential component of both elements.

We are not aware of any prosecution that has been instituted under either sections 80.2A or 80.2B. There were reports at the time that Ismail al-Wahwah's tirade in 2014 was referred to either or

both Federal and NSW State authorities<sup>94</sup> for consideration as to whether he should be prosecuted under Federal or NSW legislation, but no prosecution eventuated.

In practice, both of the intention elements listed above, which have to be proved to the criminal standard, set what we would argue to be an unreasonably high bar for prosecutors, thus making the sections unworkable.

To prove that an alleged offender has intentionally urged others to use force or violence, a prosecutor would most likely need to prove an intention by the accused to spur on, stir or stir up, animate, stimulate, or prompt others to commit violence.<sup>95</sup> Although the matter is not free from doubt, it would appear not to be necessary to prove that any person actually responded or was of a mind to respond in that manner.<sup>96</sup> The court would need to assess the effect of the accused person's conduct on an ordinary member of the class of persons to whom the conduct was directed, taking into account the circumstances in which the conduct occurred.<sup>97</sup>

In practice, a message to members of an audience urging them to engage in violence is most often conveyed by verbal signals and suggestions and symbolism, and is not stated expressly. This makes it difficult to prove the first intention element to the criminal standard, and all but impossible to prove the second.

Even in some of history's most extreme and paradigmatic examples of the evil of incitement to racially or religiously motivated violence, evidence of the first, and especially the second, element - to the criminal standard - has been missing. If the legislation is to be effective, it needs to be reformulated in a way that will allow a prosecutor the practical prospect of success in the circumstances that the legislation seeks to address.

We therefore believe that if these sections are to be preserved, the elements should be reformulated so as to require proof that an accused, intentionally *or recklessly*, has *promoted or advocated* violence rather than an *intention* by the accused to *urge* or *incite* violence.

The rationale for moving away from the language of “urge” or “incite” is analogous to that which underpinned the inclusion of an *advocacy* of terrorism of offence in the *Criminal Code*:

*It is no longer the case that explicit statements (which would provide evidence to meet the threshold of intention) are required to inspire others to take potentially devastating action in Australia or overseas. The cumulative effect of more generalised statements when made by a person in a position of influence and authority can still have the impact of directly encouraging others to go overseas and fight or commit terrorist acts domestically. This effect is compounded with the circulation of graphic violent imagery (such as beheading videos) in the same online forums as the statements are being made. The AFP therefore require tools (such as the new*

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<sup>94</sup> Michael Safi, <https://www.theguardian.com/australia-news/2015/sep/04/advocating-genocide-to-be-new-under-new-national-security-laws>

<sup>95</sup> We have applied the reasoning in *Veloskey & Anor v Karagiannakis & Ors* [2002] NSWADTAP 18 (27 June 2002) at [21] and, specifically, the Appeal Panel's analysis of the related concept of “incitement”.

<sup>96</sup> *Ibid.*

<sup>97</sup> *Ibid.*

*advocating terrorism offence) to intervene earlier in the radicalisation process to prevent and disrupt further engagement in terrorist activity.*<sup>98</sup>

Giving their utterances their plain meaning, the violence which organisations like NSN and Hizb ut-Tahrir may lead their followers, or others, to perpetrate is potentially no less serious in its scale and effects than an act of terrorist violence.

Further, the attributes to be protected by the legislation should in our view go beyond ethnic or national background and religion, and include gender, sexual preference, gender identity and disability, given that people with these attributes have also been the rhetorical (and sometimes physical) targets of extremist groups and their followers. Accordingly, we believe that the legislation should proscribe *advocacy* of violence, rather than *urging* of violence, and each of the foregoing attributes should be protected.

The rationale for making recklessness sufficient to establish the *mens rea* element would be to put beyond question what we understand the current legal position to be, namely that a prosecutor does *not* need to prove that any person or persons, in response to the conduct, formed a state of mind or carried out any act of violence.

A further deficiency in the legislation is the availability of defences in section 80.3 in certain circumstances if the defendant has acted in “good faith”. The defences in existing section 80.3 were in large part carried over from the repealed section 24F of the *Crimes Act 1914* (Cth) and drafted specifically to apply to the offence of sedition.

Such defences are fundamentally misconceived in relation to offences based on the urging of *violence* against groups distinguished by race, religion, nationality, national or ethnic origin or political opinion, or supposed members of such groups. Indeed, the existence of such defences might well be seen as giving an official imprimatur to the proposition that the advocacy of violence, including terrorism, on the arbitrary basis of race, religion, nationality, or national or ethnic origin can constitute legitimate free speech.

If it were possible in any particular case to prove that an accused had the intention that force or violence would occur in the context of urging force or violence against a group distinguished by race, religion, nationality, or national or ethnic origin, or against a supposed member of that group, the existence of such an intention would denote both ill-will and an anti-social motive, which are incompatible with any credible notion of “good faith”.

It follows that in respect of an offence under either s.80.2A or s.80.2B, the good faith defence is redundant because, in the circumstances in which it could be established, the second *mens rea* element of the offence could not have been made out in the first place. Even if the legislation were to be amended in the manner we have proposed, advocacy of violence against people on the basis of their race, religion, gender, sexual preference, gender identity or disability would also, for the same reasons, be incompatible with any suggestion that was done in good faith, because of the arbitrariness and injustice of any such basis for advocating violence.

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<sup>98</sup> Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *Fourteenth Report of 2014*, (October 2014), p.796.

#### **4.2 State and Territory laws proscribing serious vilification**

Legislation which criminally proscribes vilification of individuals or groups on the basis of race exists in Victoria<sup>99</sup>, Queensland<sup>100</sup>, South Australia<sup>101</sup> and the ACT<sup>102</sup>. Each of these States except South Australia also proscribes vilification on the basis of religion. There is some variation between these jurisdictions in the words used to describe the prohibited conduct and the prohibited grounds. Generally, however, among the elements which a prosecutor is required to prove are an incitement element (eg incitement of hatred of a person or group on the basis of their race or religion) and a threat element (eg a threat of physical harm or incitement of others to threaten physical harm).

In the previous section of this submission we outlined why we believe any requirement to prove “incitement” to the criminal standard sets the bar too high for dealing effectively with extremism. In practice, this style of legislation has proved to be completely unworkable in every jurisdiction except perhaps Victoria.

Similar legislation used to exist in New South Wales. The former sections 20D, 38T, 49ZTA and 49ZXC of the Anti-Discrimination Act 1977 (NSW) proscribed serious vilification on the grounds of race, homosexuality, HIV infection and transgender identity respectively. Ultimately, there was broad agreement across the political spectrum that these provisions were unfit for purpose. Even in clear cases of a person inciting violence against members of a protected group, a prosecutor was required to prove an act of incitement and that the incitement had been by means which included a threat of physical harm. Attorneys General from both sides of politics had referred more than 30 cases to the NSW Director Public Prosecutions for action under these provisions over 25 years and not a single prosecution, let alone a conviction, had eventuated. (One such case was the al-Wahwah diatribe against Jews in 2014, described in section 2.2.3 of this submission). Following a vigorous public campaign by a broad coalition of 31 communal, ethnic and religious organisations and leaders, the provisions were repealed in 2018 and replaced by a new offence formulated in radically different terms (see section 4.3 of this submission).

As noted in section 2.1.2 of this submission, a group of anti-Muslim white supremacists associated with the United Patriots Front who carried out a public mock beheading of a doll in 2015 were convicted and fined under the equivalent Victorian legislation in 2017. This is a rare, and possibly the only, example of this style of legislation resulting in a conviction. Those who were convicted have since continued to carry out extremist activities, as detailed in sections 2.1.2 and 2.1.3 of this submission.

#### **4.3 Part 3, Division 8 (s.93Z) of the Crimes Act 1900 (NSW)**

In 2018, Part 3, Division 8 (s.93Z) of the Crimes Act 1900 (NSW) was enacted, replacing former sections 20D, 38T, 49ZTA and 49ZXC of the Anti-Discrimination Act 1977. The new provision makes it a criminal offence, punishable by up to 3 years imprisonment and/or a fine, for any person to *threaten or incite violence* towards another person or a group of persons because of their race, religion, sexual orientation, gender identity or intersex or HIV/AIDS status. The legislation was

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<sup>99</sup> Racial and Religious Tolerance Act 2001, section 24.

<sup>100</sup> Anti-Discrimination Act 1991, section 131A.

<sup>101</sup> Racial Vilification Act, 1996, section 4.

<sup>102</sup> Criminal Code 2002, section 750.

passed by both houses of the NSW parliament with cross-party support and was assented to on 27 June 2018. It commenced operation on 13 August 2018.

It remains to be seen whether the new legislation will be any more effective than the provisions it replaced. The social media posts of UPF founder Sherman Burgess in 2019 stating that "it is time to legalise the Kike Cull" and "The only way to stop suicide is to cleanse the world of the Zionist Jew" (described in section 2.1.2 of this submission) were referred to the NSW DPP, but no prosecution eventuated. We understand that the reason there was no prosecution was that the DPP did not believe that even these egregious statements rise to the level of incitement of violence, still less a threat of violence, against Jews. The police, on the other hand, believed that the offence could be proved in this case and were keen to prosecute.

We have been informed that the NSW DPP is presently considering whether to prosecute Ismail al-Wahwah under s.93Z in respect of the posting online of his last tirade against Jews in December 2017, full details of which appear in section 2.2.3 of this submission.

#### **4.4 Chapter XI of the *Criminal Code Act 1913* (WA)**

The criminal liability regime in Chapter XI of Western Australia's Criminal Code (racist harassment and incitement to racial hatred) differs significantly from that contained in the legislation of other jurisdictions.

Chapter XI was first inserted by s 3 of the *Criminal Code Amendment (Racial Harassment and Incitement to Racial Hatred) Act 1990* (WA). Further amendments, were introduced by the *Western Australian Criminal Code Amendment (Racial Vilification) Act 2004* in response to an upsurge in vilificatory conduct by the Australian Nationalist Movement in that state and difficulties with the existing vilification laws. In particular, the difficulties of proving intent and the low penalties were identified as in need of reform.

Chapter XI currently creates categories of offence which depend on an accused's state of mind. Sections 77, 79, 80A and 80C require proof of an **intention** by the accused either to incite racial animosity or racist harassment, or to racially harass a person or group; ss 78, 80, 80B and 80D refer only to conduct having that **likely effect**.

The latter category can be characterised as strict liability offences, and the **defences** in s 80G of the Criminal Code apply only to them.<sup>103</sup> Section 80G defences are "good faith" type defences similar to those in s.80.3 of the Commonwealth Criminal Code, as discussed in section 4.1 of this submission. The accused bears the onus of proving a defence under s.80G on the balance of probabilities.<sup>104</sup>

In May 2009, one Brendan Lee O'Connell attended a Friends of Palestine protest at the IGA supermarket in South Perth, demonstrating against the sale of oranges imported from Israel. During the protest he followed around a Jewish student who was also present, haranguing and taunting him, shouting that Judaism is a "*religion and race of hate*" and calling the student a "*racist homicidal maniac*". He was pointing a video camera at the student and recorded the

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<sup>103</sup> *Mulhall v Barker* [2010] WASC 359 per Hall J.

<sup>104</sup> *Ibid.*

incident. O'Connell then video-recorded himself calling Judaism a "death cult," and urging Jewish people to leave their religion. He subsequently placed the entire video recording on YouTube.

O'Connell was charged with various offences under Chapter XI of the WA Criminal Code and brought to trial in the Perth District Court.<sup>105</sup> O'Connell's own video recording was a critical source of evidence against him. O'Connell represented himself at the trial after dismissing his lawyer. He was convicted by a 12-person jury on 6 counts of racial incitement and harassment under sections 77 and 79 of the WA Criminal Code. He was sentenced to 3 years imprisonment, and appears to have served the full term. As he was convicted by a jury, there is no published judgment.

O'Connell appealed against his conviction to the Supreme Court of Western Australia. The appeal was dismissed on 4 May 2012.<sup>106</sup>

The fact that there was a conviction by way of a unanimous verdict of a 12-person jury suggests that the law works as it was intended to, and that it has a high level of public acceptance. The small number of cases that have been prosecuted under Chapter 11 of The Criminal Code (WA) may also be interpreted as an indication that its provisions have only been resorted to infrequently and when the evidence is straightforward. It seems to us likely that those provisions would survive any challenge based on an alleged violation of the implied constitutional freedom of communication between people concerning political or government matters.

We therefore believe that these provisions of the WA Criminal Code Act provide a superior response to serious racial and religious vilification to that which is currently provided in other jurisdictions, where proof of a threat or incitement of violence (or both) is required. In our view that is too high a bar, and leaves vulnerable groups without reasonable protection against serious harassment and vilification which falls short of a threat or incitement of violence.

#### **Recommendation 4**

**4.1 Reformulate the offences in s. 80.2A and 80.2B of the *Criminal Code 1995* (Cth) so that:**

- 4.1.1 advocacy of violence, rather than urging of violence, is proscribed; and**
- 4.1.2 the protected attributes are extended to include gender, sexual preference, gender identity and disability.**

**4.2. Enact further Federal legislation, analogous to the provisions of Chapter XI of the *Criminal Code Act 1913* (WA)**

<sup>105</sup> *DPP v Brendon Lee O'Connell* (File No. IND 1767 of 2009).

<sup>106</sup> *O'Connell -v- The State of Western Australia* [2012] WASCA 96.

**5. Further steps that the Commonwealth could take to disrupt and deter hate speech and establish thresholds to regulate the use of symbols and insignia associated with terrorism and extremism, including online, giving consideration to the experience of other countries (Terms of reference – para 3d)**

The ECAJ's Annual Report on Antisemitism in Australia in 2020 noted the rise in the number of incidents involving the public display of Nazi symbols and the public sale of Nazi memorabilia.

*"Incidents included the flying of Nazi flags in public, swastika graffiti in the streets, and advertised trade in jewellery composed of Nazi swastikas and sonnenrads (sun wheels), and Nazi symbols used in artwork."*<sup>107</sup>

The report also documents occasions when the Nazi swastika was displayed from private homes in Victoria, NSW and Tasmania, or when people dressed in SS uniforms and swastika armbands have entered places of business to do their shopping. This is not the 'banality of evil' described by political theorist Hannah Arendt in her famous written portrayal of Adolf Eichmann, one of the principal implementers of the Nazi genocide against the Jewish people during World War II. It might more accurately be described as the 'banalisation' of evil, making evil seem harmless, even mundane. In the long-term, the effect is calculated to desensitise the wider community to hate behaviour, and then to acquiesce in it.

The public display of such symbols with impunity also impacts on the sense of safety and security of all Australians, including those who are members of groups and communities which have historically been the targets of Nazi policies of genocide, mass murder and other forms of persecution, such as Jews, Roma people and LGBTIQ people.

A small number of countries, particularly those which historically suffered most at the hands of Nazi tyranny, have banned the public display of Nazi and other hate symbols. These countries include Germany<sup>108</sup>, Austria, France, Lithuania, Latvia, Poland, Ukraine, Brazil and Israel.

Most countries which have introduced banning legislation provide exemptions or exclusions for the display of certain symbols when the purpose is clearly not to promote hatred. For example, the swastika in certain formats has for centuries been a religious and cultural symbol in several eastern and European traditions. Similarly, the use of Nazi symbols to educate the public about the appalling history of Nazism or for other genuine academic, research, scientific or artistic purposes, or other purposes in the public interest, should not be proscribed.

Any banning legislation that is introduced would need to be flexible enough to accommodate the constant evolution of new hate symbols by extremist groups. A useful compendium of terms and

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<sup>107</sup> Julie Nathan, [Report on Antisemitism in Australia 2020](#), Executive Council of Australian Jewry, 29 November 2020, p.7.

<sup>108</sup> Section 86a of the German *Criminal Code* outlaws "use of symbols of unconstitutional organizations" outside the contexts of "art or science, research or teaching". The law does not name the individual symbols to be outlawed, and there is no official exhaustive list. It has been used primarily to outlaw Nazi, Communist, and Islamist extremist symbols.

symbols that have been developed in recent years to advocate hatred against Jews, for example, can be found in the ECAJ's Annual Report on Antisemitism in Australia in 2020.<sup>109</sup>

Overall, we believe that legislation banning the public display of hate symbols and empowering the police to remove and confiscate hate paraphernalia would be a useful tool in countering the proliferation of extremist ideologies, but it would only scratch the surface of the problem.

In our view, such legislation would not obviate the need for a much more systematic, whole-of-government approach to address this problem, both through legislation (as per our Recommendation 4) and, most especially, through education, which we address in the next section of this submission.

### **Recommendation 5**

- 5.1 In addition to the legislative reforms set out in Recommendation 4, introduce legislation to ban the public display, including online, of any symbol for the purpose of promoting hatred against individuals or groups on the basis of their race, religion, gender, sexual preference, gender identity or disability.**
- 5.2 The legislation should also empower law enforcement agencies to remove and confiscate hate paraphernalia produced or used for any such purpose.**
- 5.3 The legislation should include a Note stating that the public display of symbols is not proscribed if the purpose is not to promote hatred, including a display for genuine academic, research, scientific or artistic purposes, or other purposes in the public interest.**

### **6. Further steps the Commonwealth could take to reinforce social cohesion, counter violent extremism and address the growing diversification of extremist ideology in Australia (Terms of reference – para 3e) - the role of education**

Counteracting extremism through legislative means alone will not in our view address the underlying problem, namely the propagation of the kinds of prejudice, conspiracy fantasies and other falsehoods which fuel extremism and extremist violence. Whilst legislation sets society's standards, and in that sense serves an educative purpose, those standards need to be entrenched in the ethos, culture and operations of government and civil society institutions more broadly.

Racial, religious and other forms of prejudice seem to take root at a very young age. The shocking racist bullying of Jewish children at public schools in Victoria in 2019, which included a serious assault and the harassment of a child as young as 5 years old,<sup>110</sup> together with similar but less well-

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<sup>109</sup> Julie Nathan, [Report on Antisemitism in Australia 2020](#), Executive Council of Australian Jewry, 29 November 2020, pp. 103-105.

<sup>110</sup> Adam Carey, '[Jewish boys taunted in shocking cases of antisemitic bullying at Melbourne schools](#)', *The Age*, 3 October 2019.

publicised incidents in public and private schools in NSW and the ACT, have demonstrated how pervasive these negative influences have been, and highlighted the destructive nexus between racist and other prejudiced attitudes and language, and acts of violence, even in young children. Inoculation of students against prejudice and extremism thus needs to begin in early primary school.

We have no doubt that schools and educators in Australia generally impart good values to children in their care, and teach them the importance of mutual respect and to balance individual freedoms, rights and responsibilities in an appropriate way. The difficulty arises when the good work done by schools is undone by other influences, especially hate-content on social media and peer-group pressure exercised via social media.

Most educators currently seek to inculcate critical thinking and educate against prejudice generally, but we believe that a critical part of the message will be lost unless anti-Jewish, anti-Indigenous, anti-Muslim and anti-Asian prejudice and other commonly-encountered forms of prejudice are expressly addressed. Generic human rights and citizenship education are not sufficient. The focus needs to be on identifying and counter-acting specific forms of racism and bigotry, and equipping students from an early age with the intellectual and ethical tools to reject them, with the aim of preventing younger people from embarking on a pathway to extremism.

We recognise that much good work continues to be done through Holocaust education and programs such as Click against Hate, but these engage mainly older students whose opinions may already have crystallised.

We believe that curricula across the disciplines from K-12 should be adapted to include:

- in primary school, the development of a respectful understanding and de-stigmatising of difference (eg race, religion, disability)
- from Year 7 in high school, addressing specific forms of racism and bigotry eg anti-Jewish, anti-Indigenous, anti-Muslim, anti-Asian, anti-LGBTIQ; and teaching students to self-reflect about their own prejudices
- from Year 10, focusing on the destructive effects of racism and bigotry both in Australia and in other parts of the world, both historically and in contemporary society
- in Years 11-12, reinforcing those themes in more depth in optional subjects.

Relevant high school subjects in which anti-prejudice content could be incorporated into the curriculum include History, English, GRE, SRE, Legal Studies, Biology, Geography, Civics and Citizenship.

Because influences outside the school, especially on social media, can undo much of the positive learning which students acquire at school, positive learning needs to be supplemented and reinforced by other external positive influences.

This could take the form of experiential learning, building on current programs such as student visits to a Holocaust Museum; organised meetings between students from different schools who have diverse cultural and religious backgrounds; student visits to institutions (lay and religious) of organisations representing diverse cultural and religious communities; and ‘open forum’ sessions where they can ask questions and engage in discussion with leaders of those communities, including youth leaders.

Some of the above activities could be organised outside working hours, so that parents and other family members could be invited to accompany students during external visits and share in the discussion, so that the learning experience is consolidated within the family unit.

We recognise that these proposals are primarily matters falling within the responsibility of State and Territory Departments of Education. From our discussions with representatives of Departments of Education in NSW and Victoria, we believe that thinking is already starting to develop along the lines we are proposing.

The problems that these proposals seek to address are not limited by State or territory borders and therefore require a consistent response across Australia.

That is why we ask that anti-prejudice education become a standing item on the agenda of the Education Council where best-practice ideas can be refined and shared. To the extent that these ideas involve adding glosses to the curriculum, the Australian Curriculum and Assessment Authority, and State and Territory Curriculum authorities also need to be consulted.

Whilst these may be difficult ideas to put into operation, the role of education in depriving extremist groups of future human fodder cannot be overstated. Legislation alone cannot solve the problem.

## **Recommendation 6**

### **6.1 Adapt school curricula across the disciplines from years K-12 to include:**

- **in primary school, the development of a respectful understanding and de-stigmatising of difference (eg race, religion, disability)**
- **from Year 7 in high school, addressing specific forms of racism and bigotry eg anti-Jewish, anti-Indigenous, anti-Muslim, anti-Asian, anti-LGBTIQ; and teaching students to self-reflect about their own prejudices**
- **from Year 10, focusing on the destructive effects of racism and bigotry both in Australia and in other parts of the world, both historically and in contemporary society**
- **in Years 11-12, reinforcing those themes in more depth in optional subjects.**

- 6.2 Enhance experiential learning, building on current programs such as student visits to a Holocaust Museum; organised meetings between students from different schools who have diverse cultural and religious backgrounds; student visits to institutions (lay and religious) of organisations representing diverse cultural and religious communities; and ‘open forum’ sessions where students can ask questions and engage in discussion with leaders of those communities, including youth leaders.**
- 6.3 Organise some of these activities to occur outside working hours so that family members have an opportunity to participate with students.**

**7. Other related matters, noting the roles and responsibilities of states and territories in Australia's counter-terrorism arrangements, and constitutional limitations (Terms of reference – para 3g) – the need for a uniform national system for classifying and recording hate-motivated crime**

The Executive Council of Australian Jewry has long argued in favour of Australia developing an official, centralised, nation-wide system for defining, classifying and recording hate-motivated crime. In contrast to the UK, the US and Canada, there is no definition of ‘hate crime’, ‘bias-motivated crime’ or even of ‘racially-motivated crime’ that is officially recognised throughout Australia, and no official, centralised, nation-wide recording of such crimes, or system to do so. Each state has a different legislative regime for proscribing hate crimes, and therefore a different methodology and classification process for recording these crimes. The absence of any consistency of approach between different jurisdictions makes it very difficult to compare rates of hate crime in different parts of Australia and to draw any conclusions about hate crimes in Australia overall. The Australian Bureau of Statistics does provide some general, comparative breakdowns of crime for the whole of Australia, but not by motivation.

The quality of any government policies aimed at addressing hate-motivated crimes in Australia will necessarily be compromised by these limitations. Proper research into and analysis of the nature, incidence and long-term trends of hate-motivated crimes in Australia continues to be constrained by the unavailability of data based on a uniform national system for classifying and recording hate crimes. With invaluable input from our colleagues at the Australian Hate Crime Network, which we acknowledge with gratitude, we have developed an outline of how such a system could operate in Australia. We attach that document as an Appendix to this submission.

**Recommendation 7**

**Australia should develop an official, centralised, nation-wide system for defining, classifying and recording hate-motivated crime, analogous to the uniform national systems already operating in the UK, the US and Canada.**

## **List of Recommendations**

### **Recommendation 1**

- 1.1 Enact a national law analogous to current State and Territory laws applicable to criminal gangs empowering the Minister for Home Affairs to designate an organisation as an extremist organisation if satisfied that:**
  - members of the organisation associate together for the purpose of organising, planning, facilitating, supporting or engaging in activities which are calculated to provoke animosity between groups or individuals in Australia on the basis of race, religion, gender, sexual preference, gender identity or disability; and
  - the organisation or its members represent a risk to public peace, safety or order.
- 1.2 The new law should confer Federal, State and Territory law enforcement agencies with powers to obtain control orders against members of designated organisations and persons who regularly associate with them, as well as:**
  - enhanced powers of investigation, search and seizure
  - powers to issue take-down orders to ISPs and social media platform providers; and
  - powers to obtain public safety orders and firearms control orders in respect of designated organisations, their members and persons who regularly associate with them.
- 1.3 The legislation should also include anti-consorting provisions making it an offence to associate with convicted offenders after receiving an official warning from a law enforcement agency.**
- 1.4 Declarations designating organisations as extremist organisations should be regularly updated, as such organisations dissolve and re-form.**
- 1.5 Extend the scope of existing counter-terrorism commands within Federal, State and Territory law enforcement agencies by establishing and resourcing specialised units within those commands, to the extent that these do not already exist, to focus on particular extremist groups and individuals who have the potential to engage not only in terrorism but also in hate crimes at a lower level than terrorism, ranging from graffiti and offensive language through to serious physical violence.**
- 1.6 Law enforcement agencies should pay particular attention to potential offenders who are on the fringes of declared groups or who have only loose connections with them, especially via online platforms.**

## **Recommendation 2**

To prevent the infiltration of the security industry, law enforcement and intelligence agencies and the Australian Defence Force by persons who have engaged in the activities of a designated organisation, review the rules governing qualification for entry to each of these vocations so that they expressly exclude such persons, and provide for the peremptory revocation of the license of any such person who is a security guard, and the termination of the service of any such person who is a member of a law enforcement or intelligence agency or of the Australian Defence Forces.

## **Recommendation 3**

The entire Hizballah organisation should be listed as a terrorist organisation by a regulation made under Division 102 of the *Criminal Code Act 1995* (Cth).

## **Recommendation 4**

**4.1 Reformulate the offences in s. 80.2A and 80.2B of the *Criminal Code 1995* (Cth) so that:**

- 4.1.1 advocacy of violence, rather than urging of violence, is proscribed; and**
- 4.1.2 the protected attributes are extended to include gender, sexual preference, gender identity and disability.**

**4.2. Enact further Federal legislation, analogous to the provisions of Chapter XI of the *Criminal Code Act 1913* (WA)**

## **Recommendation 5**

- 5.1 In addition to the legislative reforms set out in Recommendation 4, introduce legislation to ban the public display, including online, of any symbol for the purpose of promoting hatred against individuals or groups on the basis of their race, religion, gender, sexual preference, gender identity or disability.**
- 5.2 The legislation should also empower law enforcement agencies to remove and confiscate hate paraphernalia produced or used for any such purpose.**
- 5.3 The legislation should include a Note stating that the public display of symbols is not proscribed if the purpose is not to promote hatred, including a display for genuine academic, research, scientific or artistic purposes, or other purposes in the public interest.**

## **Recommendation 6**

**6.1 Adapt school curricula across the disciplines from years K-12 to include:**

- in primary school, the development of a respectful understanding and de-stigmatising of difference (eg race, religion, disability)**

- from Year 7 in high school, addressing specific forms of racism and bigotry eg anti-Jewish, anti-Indigenous, anti-Muslim, anti-Asian, anti-LGBTIQ; and teaching students to self-reflect about their own prejudices
  - from Year 10, focusing on the destructive effects of racism and bigotry both in Australia and in other parts of the world, both historically and in contemporary society
  - in Years 11-12, reinforcing those themes in more depth in optional subjects.
- 6.2 Enhance experiential learning, building on current programs such as student visits to a Holocaust Museum; organised meetings between students from different schools who have diverse cultural and religious backgrounds; student visits to institutions (lay and religious) of organisations representing diverse cultural and religious communities; and ‘open forum’ sessions where students can ask questions and engage in discussion with leaders of those communities, including youth leaders.
- 6.3 Organise some of these activities to occur outside working hours so that family members have an opportunity to participate with students.

### **Recommendation 7**

Australia should develop an official, centralised, nation-wide system for defining, classifying and recording hate-motivated crime, analogous to the uniform national systems already operating in the UK, the US and Canada.

### **Conclusion**

We are happy to appear before the Committee and provide it Committee with any further information or input it may require from us. We wish the Committee well in its deliberations.

Yours sincerely

**Peter Wertheim AM  
Co-CEO**

[Appendix follows on next page]



## **Executive Council of Australian Jewry**

### **Appendix to Executive Council of Australian Jewry submission to Parliamentary Joint Committee on Intelligence and Security Inquiry into matters relating to extremist movements and radicalism in Australia**

## **Outline for a uniform national system for classifying and recording hate crimes**

### **Why Australia needs a uniform national system for classifying and recording hate crimes**

In Australia, in stark contrast to the UK, the US and Canada, there is no definition of ‘hate crime’, ‘bias-motivated crime’ or even of ‘racially-motivated crime’ that is officially recognised throughout the country, and no official, centralised, nation-wide recording of such crimes, or system to do so. Each state and Territory has a different legislative regime for proscribing hate crimes, and therefore a different methodology and classification process for recording these crimes. The absence of any consistency of approach between different jurisdictions makes it very difficult to compare rates of hate crime in different parts of Australia and to draw any conclusions about hate crimes in Australia overall. The Australian Bureau of Statistics does provide some general, comparative breakdowns of crime for the whole of Australia, but not by motivation.

Proper research into and analysis of the nature, incidence and long-term trends of hate crimes in Australia is severely constrained by the unavailability of data based on a uniform national system for classifying and recording hate crimes. The quality of any government policies aimed at addressing hate crimes in Australia will necessarily be compromised by these limitations.

While a uniform definition of what constitutes a hate crime would obviously be useful, it is critical that police officers also be provided with the skills and training to identify and classify reports of hate crimes correctly. The integrity of any hate crime data system will be dependent on both a consistent definition as well as consistent application of the definition by police services across Australia.

The experience in the UK, US and Canada suggests that the additional investment of resources in training police and implementing a national hate crimes recording system would not be excessive and would have positive practical and symbolic significance in signaling a determination by government to address hate crimes. Overseas experience suggests that this helps reduce the incidence of such offences, and also promotes more cohesive communities, in which various groups who have traditionally been the target of hate crimes feel that their needs have been addressed. Alt-

hough the police response is a critical component in the effort to address the problem of hate crimes, the promotion of public awareness of the problem, and public confidence in the system's response, are also important in overcoming the traditional reluctance of members of affected groups to report such crimes for fear of reprisals or not being taken seriously.

### **Which crimes would be recorded?**

- Hate crimes *per se*. These are crimes which include, as a defined element of the crime itself, hostility or prejudice against the victim on the basis of a protected attribute. Examples include offences in s.80.2A, s.80.2B and 80.2D of the *Criminal Code 1995* (Cth), s.93Z of the *Crimes Act 1900* (NSW) and Chapter XI of the *Criminal Code Act 1913* (WA), and the serious vilification offences in various State and Territory Acts.
- Hate-motivated crimes. These are ordinary crimes such as murder, assault, robbery and malicious damage to property, but only when they are motivated at least in part by hostility or prejudice towards the victim on the basis of a protected attribute. The hostility or prejudice is not an element of the crime itself. The hate motivation is an additional factor which may be relevant in sentencing, but not to the question of guilt or innocence.

### **What should be the criteria for inclusion?**

- In the case of hate crimes *per se*, all reports of an offence should be recorded.
- A reported offence should be recorded as a hate-motivated crime if it is perceived by the victim or a witness to have been motivated or partly motivated by hostility or prejudice towards the victim on the basis of a protected attribute, whether or not that perception is shared by law enforcement authorities.
- A report of an offence that appears to the victim, a witness or the police, to involve hostility or prejudice on the basis of a protected attribute should be recorded, at least provisionally, as a hate-motivated crime. As more information is gathered, incidents are reviewed and verified and their status may be reclassified. There should be a second level of review and oversight by a specialist hate crimes unit, having specialised knowledge and expertise, within each State or Territory police agency. Consideration should be given to whether the reviewing unit should also have investigative powers, either taking carriage of all investigations or selectively investigating cases that require in depth and specialised knowledge and skills.
- Suspected hate crimes should be separately recorded and may include criminal incidents that cannot be confirmed as hate crimes, but for which there is sufficient evidence to suspect that they are motivated by hate (e.g., hate graffiti defacing property where no accused has been identified).

### **What should be the protected attributes?**

The actual or perceived:

- race or ethnicity;
- religion or beliefs;
- sexuality;
- disability;
- gender identity or expression or sex characteristics; and.
- gender

of the victim or victims.

## **What details about the reported offence should be recorded?**

- Details required to prove the elements of the offence;
- In the case of hate-motivated crime, details of the hostility or prejudice which it is alleged were a motivating factor in the offence. Such details would include things allegedly said or done by the perpetrator before, during or after the occurrence of the reported offence, and the relevant protected attribute(s) of the victim, actual or perceived.
- In the case of hate-motivated crime, whether the police propose to adduce evidence that the alleged offence was hate-motivated, and/or to seek an enhanced penalty.
- Whether or not the reported offence resulted in a prosecution and, if so, whether hostility or prejudice on the basis of a protected attribute was a factor in the prosecution.
- Whether or not the reported offence resulted in a conviction and, if so, whether hostility or prejudice on the basis of a protected attribute was a factor in the conviction.

## **How should uniformity in classification and reporting be achieved?**

- The questions to be asked by law enforcement officials when an alleged offence is reported, and the requirements for recording the answers, should be specified and made mandatory in a new **Hate Crime Statistics Act (Cth), and regulations made under that Act**. This legislation should be modelled on the US Act of the same name, subject to two key qualifications. Firstly, the reporting requirement should be based on a perception test (ie the perception of the victim, a witness or the police). Secondly, the responsibility of each law enforcement agency to forward a report of a hate-motivated offence to the AFP promptly should be made mandatory. Corresponding legislation should be enacted by the States and Territories.
- The legislation should also specify the technical mechanisms for recording the data electronically, and for sharing the data across jurisdictions, and between relevant government agencies, including the Australian Bureau of Statistics. Any data that is shared outside law enforcement agencies must be de-identified.
- The Australian Federal Police (AFP) should be responsible for administering the legislation and overseeing the system, including police training and ongoing professional development. A Hate Crimes Tracking Unit should be established within the AFP under the direction of a Director of Hate Crimes Statistics, who would report directly to the Commissioner. One of the functions of the Director would be community liaison with organisations serving protected-attribute groups for the purposes of developing and reviewing the police responses to hate crimes, and the recording of hate crimes. Consideration should also be given to integrating into the legislation the establishment of a Hate Crime Scrutiny Panel in each state, based on the UK model, to enable representatives of protected-attribute groups to give feedback in respect of a sample of de-identified hate crime cases affecting that group.
- Law enforcement agencies should be assisted by the publication of Hate Crime Data Collection Guidelines and Training Manual modelled on the equivalent documents issued by the College of Policing in the UK. The Collection Guidelines and Training Manual should periodically be refined and updated, in the light of actual experience.
- Law enforcement personnel from different States and Territories should come together for training and professional development in the implementation of the legislation, rather than be trained solely with colleagues from within their State or Territory.

- Demonstrated understanding of, and proficiency in reporting, hate crimes and hate-motivated crimes should be made a condition of promotion for all law enforcement agency personnel.

### **What use should be made of the data?**

- The recorded data should be readily searchable electronically, for example:
  - by type of offence (eg murder, assault, robbery, malicious damage to property, urging violence, threatening violence)\*;
  - by protected attribute;
  - by sub-categories of each protected attribute (eg by specific racial or ethnic groups within the “race or ethnicity” category; by specific religious groups within the “religion or beliefs” category; or by specific types of sexuality within the “sexuality” category);
  - by date and time of reported offence;
  - by State, Territory and more specific location where the reported offence occurred;
  - by key-words, oral or written, used before, during or after the alleged offence, which signify a hate motivation;
  - by whether or not the reported offence resulted in a prosecution and, if so, whether hostility or prejudice on the basis of a protected attribute was a factor in the prosecution.
  - by whether or not the reported offence resulted in a conviction and, if so, whether hostility or prejudice on the basis of a protected attribute was a factor in the conviction.
  - by names and aliases of the alleged perpetrator.<sup>^</sup>
  - by whether the alleged perpetrator acted alone or with others and, in the latter case, by groups of named perpetrators.<sup>^</sup>
- \*[Note: This will require similar types of offence to be grouped even if they are defined differently between jurisdictions].
- ^ [Note: To be available only to law enforcement agencies]
- The AFP should be required to publish an annual national report of the data, including the above breakdowns (other than by name of an alleged perpetrator or names of a group of alleged perpetrators). All generally published data should be de-identified. The report should include an analysis of the major trends in hate crimes over the preceding 12 months and any emerging trends.