Submission to the PJCIS Inquiry into extremist movements and radicalism in Australia.

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Dear Committee Secretary

Thank you for the opportunity to provide a submission to the inquiry into extremist movements and radicalism in Australia. We are also happy to discuss our work with the Committee in person if that would assist the Committee in this inquiry.

We are part of a larger team of researchers at the Australian National University focused on designing and implementing initiatives that strengthen social cohesion within local communities (ASCEND). This work is a three-year $2.8m project funded under the ANU's Grand Challenge Scheme.

The ASCEND team includes expertise from across the University, including Psychology, Politics, Criminology, Business, Demography, Law and History. Prior to the current collaboration, we have been researching and investigating a broad spectrum of related topics including social and national identity, citizenship, ethnic diversity and multiculturalism, social capital, social entrepreneurship, and violent extremism. A short list of references to our relevant work is included at the end of this submission.

Our research relates to social cohesion, countering violent extremism (CVE), and the relationship between these two concepts. In line with this focus, this submission concentrates on

- 3e) '*further steps the Commonwealth could take to reinforce social cohesion, counter violent extremism and address the growing diversification of extremist ideology in Australia*'.

Following our submission addressing 3e), we will address two further terms of reference, also through the lens of social cohesion

- 3d) '*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*';
- 3b) '*changes that could be made to Australia's Counter-Terrorism Strategy in relation to preventing radicalisation to extremist views, including the capacity for further partnership approaches with state, territory and local governments*'.

We welcome the Committee's consideration of how the Commonwealth could reinforce social cohesion in order to prevent radicalisation to violent extremism or terrorism. In a diverse country such as Australia, well formulated laws, policy and programs to promote social cohesion may be a useful tool in building a prosperous, harmonious, and equitable society. However, the government needs to take great care. Laws, policies and programs that intend to build social cohesion can also operate to marginalise individuals and communities and exacerbate conditions that might lead to radicalisation towards violent extremism or terrorism. A thoughtfully formulated and clear understanding of social cohesion is foundational to any effort to devise further steps that build a harmonious community.

Recommendations for the Committee

1. Our recommendations to the Committee are as follows:
   A. The government adopt a clearer understanding of social cohesion as belonging, trust, legitimacy, participation, and equity.
   B. The government carefully formulate laws, policies, and measures so that they are perceived by all the diverse communities in Australia to reinforce social cohesion.
   C. We recommend that the government critically evaluate the extent to which its existing laws, policies, and programs reinforce belonging, participation, trust, and legitimacy (fundamental components of social cohesion), as well as equity (a key antecedent of social cohesion) for all Australians.
   D. We recommend that the government evaluate how its existing laws, policies and programs reinforce social cohesion *holistically*. That is, through measures that go beyond the issue of radicalisation towards violent extremism or terrorism.
   E. Further, as Australians experience social cohesion at a local level, we recommend that the Commonwealth acknowledges the extent to which its laws, policies and programs work with, or against, state and local government measures and co-ordinates (or adjusts) accordingly.
   F. The Commonwealth government take steps to strengthen the role that s18C of the *Racial Discrimination Act* 1975 (Cth) plays in Australian society, and undertake reforms to remove barriers to its use.
   G. We recommend that in order to develop effective partnerships in CVE programs, government and law enforcement agencies re-examine their approaches to community engagement to ensure that they are built on mutual respect and trust.
   H. To prevent radicalisation, strategies that focus on crime prevention and target the underlying drivers of anti-social behaviours would be a better starting point than strategies with a CVE focus.

What is social cohesion?

2. At face value, social cohesion is a term easily understood. Much discussion of social cohesion seems to rely on an intuitive understanding of the term. For example, the ASCEND law team reviewed references to social cohesion in Australian case law over the last 15 years. In over 50 cases referencing the term, none provided any explanation for what it meant.[1] In these cases, while 'social cohesion' indicated a generally desirable social good, a clear definition was absent.

3. Uncertainty about the meaning of the term 'social cohesion' also occurs in government policy. For example, the Department of Home Affairs website provides a brief statement of social cohesion that emphasises the importance of shared values, as well as the celebration of diversity in a unified and harmonious nation.[2] While some literature indicates that the value of 'belief in diversity and multiculturalism' is a component of social cohesion, almost all the current models reject the idea that 'shared values' are a component of social cohesion. This is because the idea of 'shared values' is too generalised and non-specific (what are shared values?), and their 'shared' nature too empirically contestable and uncertain (can any values be 'shared' in a diverse society?).

4. Generalised and non-specific statements about social cohesion as 'shared values' are therefore problematic. Existing literature suggests that broad policies that claim to promote social cohesion in fact facilitate the exclusion of parts of the community. Such policies can undermine the cohesiveness of a society as a whole.[3] Consequently, it is imperative that further Commonwealth efforts to reinforce social cohesion are underpinned by a robust and nuanced understanding of the term.

5. We note some disagreement about how to conceptualise the term social cohesion.[4] In our recent work, including a submission to the Senate Inquiry on Nationhood, Citizenship and Democracy, we draw on the definition of social cohesion developed by Joseph Chan, Ho-Pong To and Elaine Chan.[5] This definition focusses on the presence of attitudes such as trust, a sense of belonging and willingness to participate and to help others.[6] This framework looks at whether these indicators

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[1] See, eg, *Eatock v Bolt* (2011) 197 FCR 261, 325 [267].

[2] About social cohesion', *Australian Government Department of Home Affairs* (Web Page) <https://www.homeaffairs.gov.au/about-us/our-portfolios/social-cohesion/about-social-cohesion>.

[3] See, eg, Douglas Ezzy et al., 'Religious Diversity in Australia: Rethinking Social Cohesion' (2020) 11(2) *Religions* 92, 103; Ana Aliverti, 'Enlisting the Public in the Policing of Immigration' (2015) 55(2) *British Journal of Criminology* 215; Daniel Augenstein, 'Normative Fault-Lines of Transnational Human Rights Jurisprudence: National Pride and Religious Prejudice in the European Legal Space' (2013) 2(3) *Global Constitutionalism: human rights, democracy and the rule of law* 469.

[4] See, eg, Douglas Ezzy et al, 'Religious Diversity in Australia: Rethinking Social Cohesion' (2020) 11(2) *Religions* 92, 95-8.

[5] See Joseph Chan, Ho-Pong To and Elaine Chan, 'Reconsidering Social Cohesion: Developing a Definition and Analytical Framework for Empirical Research' (2006) 75(2) *Social Indicators Research* 273.

[6] Joseph Chan, Ho-Pong To and Elaine Chan, 'Reconsidering Social Cohesion: Developing a Definition and Analytical Framework for Empirical Research' (2006) 75(2) *Social Indicators Research* 273, 290.

of social cohesion exist between members of the community (the 'horizontal dimension'), and between the community and the government (the 'vertical dimension'). Further, the framework makes a distinction between perceptions and feelings (the 'subjective component') and visible behaviour (the 'objective component'). These elements can be set out in the two-by-two table extracted below.[7]

	Subjective component (People's state of mind)	Objective component (Behavioural manifestations)
Horizontal dimension (Cohesion within civil society)	General trust with fellow citizens	Social participation and vibrancy of civil society
	Willingness to cooperate and help fellow citizens, including those from "other" social groups	Voluntarism and donations
	Sense of belonging or identity	Presence or absence of major inter-group alliances or cleavages
Vertical dimension (State-citizen cohesion)	Trust in public figures	Political participation (e.g. voting, political parties etc.)
	Confidence in political and other major social institutions	

6. For the purposes of our work, this framework provides an approach to analysing the impact of legislation on social cohesion. In essence laws, policies, or programs that tend to promote these elements (for example, 'general trust with fellow citizens') are likely to reinforce social cohesion, while those that detract from these outcomes may undermine it.

7. There is growing acceptance that these elements reflect an understanding of social cohesion. For instance, they were incorporated into the five elements of social cohesion outlined in a recent review of social cohesion literature and programs commissioned by the Victorian government and in a report by the New Zealand Royal Commission of Inquiry into the Attack on Christchurch Mosques. The elements of social cohesion as outlined in those reports are:
    - "belonging – a sense of being part of the community, trust in others and respect for law and human rights;
    - inclusion – equity of opportunities and outcomes in work, income, education, health and housing;

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[7] From Joseph Chan, Ho-Pong To and Elaine Chan, 'Reconsidering Social Cohesion: Developing a Definition and Analytical Framework for Empirical Research' (2006) 75(2) *Social Indicators Research* 273, 294.

- participation – involvement in social and community activities and in political and civic life;
- recognition – valuing diversity and respecting differences; and
- legitimacy – confidence in public institutions."[8]

8. We note that these elements are not alien to Australian governance and democratic processes.[9] These principles reflect best-practice in governance and some of the ideals to which our democratic society aspires.

9. We recommend that the government accept a definition of social cohesion as incorporating elements of belonging, trust, legitimacy, and participation, and fosters equity in Australian society. Further, the definition of social cohesion should acknowledge the important role that the social and political context – in particular, the complex power relations between groups – can play in influencing social cohesion and responses to social cohesion policy and programs.[10]

10. In evaluating whether or not a policy or program will reinforce social cohesion it is essential to consider how it will be perceived by different communities in Australia. Australia is a diverse country. For example, country of birth, cultural heritage, languages spoken, religious belief, sexual orientation, gender identity, age, level of educational attainment, income, wealth, and personal aspirations are some of the many aspects of the diversity of Australian society.[11]

11. Due to this diversity, we recommend the careful formulation of social cohesion laws, policies, and programs so that they are widely perceived by these diverse communities to reinforce social cohesion, and so that they do not inadvertently exclude or marginalise. Exclusion and marginalisation can occur even when laws, policy or programs explicitly aim to reinforce social cohesion.[12]

Terms of Reference 3e) 'further steps that the Commonwealth could take to reinforce social cohesion…'

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[8] *Ko tō tātou kāinga tēnei: Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* (Final Report, 26 November 2020) vol 4, 654 [8]. See also Michele Grossman et al, *Stocktake Research Project: A Systematic Literature and Selected Program Review on Social Cohesion, Community Resilience and Violent Extremism 2011-2015* (Report, June 2016) 4. Similar elements underpin the social cohesion surveys in Australia undertaken by the Scanlon Foundation: Andrew Markus, *Mapping Social Cohesion 2020* (Report, 2021) 28.

[9] For example, Australia's commitments as part of the Open Government Partnership touch on elements of these principles: Australian Government, *Australia's Second Open Government National Action Plan 2018-2020* (Report, 2018) <https://www.opengovpartnership.org/wp-content/uploads/2018/09/Australia_Action-Plan_2018-2020.pdf>.

[10] Nima Orazani, 'Revisiting social cohesion: New challenges with definition, measurement, and social change' (Draft Research Report, unpublished) 13.

[11] See, eg, 'Snapshot of Australia', *Australian Bureau of Statistics* (Web Page, 28 June 2017) <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Snapshot%20of%20Australia,%202016~2>.

[12] See, eg, Ana Aliverti, 'Enlisting the Public in the Policing of Immigration' (2015) 55(2) *British Journal of Criminology* 215; Daniel Augenstein, 'Normative Fault-Lines of Transnational Human Rights Jurisprudence: National Pride and Religious Prejudice in the European Legal Space' (2013) 2(3) *Global Constitutionalism: human rights, democracy and the rule of law* 469.

12. Before recommending further steps, it is important to evaluate present measures. We argue that current attempts to reinforce social cohesion are largely ineffective, and are potentially counter-productive.

13. Our analysis of Australia's existing legislative measures designed to improve social cohesion indicates that while they may reinforce a sense of social cohesion amongst some individuals in the communities, this is often not a shared experience. Some communities in Australia perceive these measures as targeting them in a discriminatory and harmful way.[13] This experience not only undermines the social cohesive claims of the measures, but the legislation may also result in a social experience that leads some individuals to radicalisation towards violent extremism or terrorism.[14]

14. We illustrate this argument, and the importance of evaluating the effectiveness of social cohesion measures in their political context, with two case studies. The first relates to terrorism and proscription laws. The second relates to planning laws.

Case Study Number 1 – Terrorism and Proscription Laws

15. As would be well-understood by the PJCIS, there are two processes by which an organisation could be designated a terrorist organisation. This section of our submission will focus only on what some scholars have called 'executive proscription':[15] the process by which the AFP Minister uses regulations to 'list' a group as a terrorist organisation.[16] The legislative provisions that facilitate this action by the executive exemplify the complex effects that counter-terrorism laws can have on social cohesion. In particular, we would emphasise that the way in which the operation of this area of Australia's counter-terrorism law framework is perceived can have an important impact on the level of trust in government.

16. On the one hand, we accept the reality that there *are* organisations which represent a significant security threat to Australia.[17] Such organisations seek to use violence to further their 'political, ideological or religious' aims.[18] Amongst other things, such violent actions should be rightly judged a threat to the social cohesion in

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[13] Some of the legislation we have considered includes the *Counter-Terrorism (Temporary Exclusion Orders) Act 2019* (Cth) as well as the amendments to the *Criminal Code Act 1995* (Cth) introduced by the *Criminal Code Amendment (High Risk Terrorist Offenders) Act 2016* (Cth) and the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth).

[14] Lyons-Padilla, Gelfand, Mirahmadi, Farooq, and van Egmond (2015); Thomas, McGarty, & Louis, 2014; Moghaddam's (2005); Doosje, Loseman, & van den Bos, 2013. For more detail, see paragraphs [61] to [75] of this submission.

[15] Nicola McGarrity and George Williams, 'The Proscription of Terrorist Organisations in Australia' (2018) 30(2) *Terrorism and Political Violence* 216, 218 (noting that these writers acknowledge that the term is not entirely accurate).

[16] Australian Government, 'Listed terrorist organisations', *Australian National Security* (Web Page) <https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>.

[17] Australian Security Intelligence Organisation, *ASIO Annual Report 2019-20* (Report, 15 October 2020) 3.

[18] This is a key element of the definition of a 'terrorist act' in Commonwealth criminal law. See *Criminal Code Act 1995* (Cth) s 100.

liberal democratic Australia. As such, we accept the necessity of having some legal framework to discourage terrorist activity, including by groups and organisations. It is helpful that mechanisms in the legislation exist to define what a 'terrorist organisation' is. However, if the way these legal mechanisms work is not well understood by the Australian community, there is a possibility that the provisions could operate to decrease trust in government, which in turn, could *decrease* levels of social cohesion.

17. One of the ways in which better public understanding of the process can be facilitated is by ensuring that as much of the process by which an organisation is proscribed is done publicly and as transparently as possible. In this case, we certainly accept that it is important that national security imperatives, including operational objectives, are not compromised. We also acknowledge that in many respects, the accountability mechanisms that accompany the process of executive proscription are currently already made public, and so provide some measure of accountability. The past PJCIS practice of clearly delineating in its reports how the 'legislative criteria' and 'non-legislative factors' have been applied to explain why a particular group should be included on the list of terrorism organisations have been extremely helpful. [19] We note, however, that this delineation of factors is arguably less clear in the committee's 2020 practice of providing reports via Statements to Parliament.[20]

18. We commend the Australian government for making publicly available the 'protocol for listing terrorist organisations'.[21] It is also pleasing that many of the Statements of Reasons which accompany the regulations seeking to list (or re-list) organisations also include the publicly available (unclassified) evidence which the government relies on. [22] We also see the contribution of this Committee in reviewing the regulations that are made to list (and re-list) organisations as a key part of the accountability framework. In particular, the fact that members of the public *can* make submissions to the Committee also means that the listing process is somewhat more open. However we note that during the 46th Parliament very

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[19] See, eg, Parliamentary Joint Committee on Intelligence and Security, *Review of the listing and re-listing of six organisations as terrorist organisations under the Criminal Code* (Report, August 2019).

[20] See, eg, Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of al-Qa'ida in the Arabian Peninsula, al-Qa'ida in the Indian Subcontinent, Islamic State in Libya and Islamic State Sinai Province under the Criminal Code* (Report by Statement, January 2020); Parliamentary Joint Committee on Intelligence and Security, *A review of regulations listing the Islamic State West Africa Province and re-listing Boko Haram, Islamic State and Islamic State East Asia as terrorist organisations under the Criminal Code Act 1995* (Report by Statement October 2020); *Parliamentary Joint Committee on Intelligence and Security A review of regulations listing Jama'at Nusrat al-Islam walMuslimin and re-listing Islamic State Khorasan Province as terrorist organisations under the Criminal Code Act* 1995 (December 2020).

[21] Australian Government, 'Protocol for listing terrorist organisations', *Australian National Security* (Web Page) <https://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/ProtocolForListingTerroristOrganisations.aspx>

[22] See eg Explanatory Statement *Criminal Code (Terrorist Organisation – Islamic State West Africa Province) Regulations 2020 (Cth)* Attachment C; Explanatory Statement, *Criminal Code (Terrorist Organisation – Al-Qa'ida in the Arabian Peninsula) Regulations 2019 (Cth)* Attachment B.

few members of the public took the opportunity to make a submission.[23] While working out ways to increase public engagement with parliamentary committees (and parliamentary processes more generally) is a vexed question,[24] if the Committee were able to increase public engagement in its work in reviewing the list of terrorist organisations it may also increase other measures of social cohesion such as participation.

19. As McGarrity and Williams point out, one of the consequences of the *Criminal Code* defining the concept of 'a terrorist organisation' broadly is that 'it is necessary for the…[relevant Minister] to be selective; they must determine which of the organisations that fall within the definition pose a particularly grave threat and therefore should be proscribed.'[25] While the attempts to ensure transparency and accountability for the listing process described above are admirable, an area of uncertainty remains: namely *why* the Australian list of proscribed 'terrorist organisations' is primarily made up of organisations associated with Islamic extremism.[26] We are not seeking to argue that such groups should not be included on the list of proscribed organisations (so long as there is credible evidence that the groups' activities meet the legislative and non-legislative criteria to warrant their inclusion on the list). Instead we want to draw attention to the detrimental effect on 'trust' in government and government processes (and thus on social cohesion) that these provisions create because of the perception that the executive can list terrorist organisations *too* selectively.[27] If the public perception is that these laws are only being used to target only one particular type of terrorist threat, then it arguably diminishes trust in the operation of the entire legislative scheme.[28]

20. This case study also highlights more broadly how measures that prevent terrorism can both enhance and erode social cohesion. It may enhance social cohesion because it eliminates the capacity of terrorist ideology to divide society and enhances trust and sense of community safety. However, terrorist measures

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[23] Only two of the PJCIS inquiries into listing or re-listing of terrorist organisations appear to have received submissions from persons outside of government, although it is possible that the situation with COVID-19 had an impact on submissions received. See the submissions received Parliamentary Joint Committee on Intelligence and Security, *Review of the listing and re-listing of six organisations as terrorist organisations under the Criminal Code* (Report, August 2019) Appendix A ; Parliamentary Joint Committee on Intelligence and Security, *Review of the re-listing of four organisations as terrorist organisations under the Criminal Code* (January 2020) < https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Intelligence_and_Security/4r elistings/Submissions>

[24] See eg Carolyn Hendricks and Adrian Kay, 'From "Opening Up" to Democratic Renewal: Deepening Public Engagement in Legislative Committees' (2019) 54(1) *Government and Opposition* 24.

[25] Nicola McGarrity and George Williams, 'The Proscription of Terrorist Organisations in Australia' (2018) 30(2) *Terrorism and Political Violence* 216, 223.

[26] Jessie Smith, Australia recognises the threat posted by far-right groups. So, why aren't they listed on the terror register?' (19 March 2020) *The Conversation*; Tony Murney, Submission No 2 to Parliamentary Joint Committee on Intelligence and Security, *Review of the Listing and Re-Listing of Six Organisations Under the Criminal Code* (12 August 2019) para [7].

[27] Tony Murney, Submission No 2 to Parliamentary Joint Committee on Intelligence and Security, *Review of the Listing and Re-Listing of Six Organisations Under the Criminal Code* (12 August 2019) para [12].

28 ASIO Annual Report (2019-2020).

including proscription laws have also been perceived by members of Australia's Muslim communities to justify acts of discrimination and social harassment against them. Certainly, CVE programs appear to have targeted radical Muslim groups, rather than addressing also the equally divisive and violent views of right-wing extremists. Some of these concerns about the focus of Australia's response to terrorism have surfaced in submissions to previous inquiries conducted by this Committee.[29]

21. This case study highlights the importance of a holistic perspective when designing policies to reinforce social cohesion. Different sections of the Australian community may respond differently to Commonwealth initiatives in this area. It is therefore important to look not only at the intent of the initiative, but how it is received by a diverse range of community groups. Unless an initiative is perceived to promote social cohesion by all groups, it may be counter-productive and instead erode social cohesion.

Case study 2 – Planning Laws

22. Terrorism is not the only context in which social cohesion might be relevant. Social cohesion as belonging, trust, legitimacy, equity and participation can be reinforced and /or undermined by laws, policies and programs that do not explicitly refer to social cohesion.

23. In our preliminary work on a stocktake of legislation that may impact on social cohesion, we have so far examined the *Public Service Act 1999* (Cth), *Foreign Influence Transparency Scheme Act 2018* (Cth) and the *Criminal Code Act 1995* (Cth). While these acts do not mention the term social cohesion,[30] our analysis suggests that these acts do have an impact on social cohesion. Specifically, they touch upon issues of trust, accountability and legitimacy between individuals, and between individuals and the government. We also found that while they might reinforce a sense of social cohesion for some community groups, this is not experience of all groups. These laws, policies and measures exclude and marginalise individuals belonging to culturally and religiously diverse communities in Australia. Therefore, these laws both reinforce and erode social cohesion in Australia.

24. Accordingly, to evaluate the Government's steps in reinforcing social cohesion, we recommend that the government considers a holistic approach to reinforcing social cohesion. We recommend that the Government evaluates the way that its laws, policy and initiatives interact with social cohesion beyond measures relating to radicalisation towards violent extremism or terrorism.

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[29] See, eg, Islamic Council of Queensland et al, Submission No 30 to Parliamentary Joint Committee on Intelligence and Security, *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014* (2 October 2014) [2.1.1].

[30] Social cohesion policy generally seems to be focussed on citizenship, migration, multiculturalism, and related areas: see, eg, 'Social cohesion', *Australian Government Department of Home Affairs* (Web Page) <https://www.homeaffairs.gov.au/about-us/our-portfolios/social-cohesion>.

25. Further, we recommend that the Commonwealth better informs itself of the broader context in which social cohesion measures operate. Ensuring a sense of belonging in a culturally diverse society is to a significant degree implemented locally, through laws such as planning legislation. Promotion of social cohesion is therefore an important task at all levels of government, and requires consideration and co-ordination to be consistent and effective. Our second case study relates to the impact of local planning laws to illustrate this point.

26. Planning law (such as, for example, the *Environmental and Planning Assessment Act 1979* (NSW)) states the promotion of the social welfare of the community as one of its objectives. However, the mechanisms of planning laws can work to reinforce dominant and ethnocentric norms through prima facie technical and apolitical categories concerned with buildings, objects, and spaces and seemingly inclusive democratic features, such as planning consultations.

27. Studies have shown that minority religious and cultural groups as well as recent migrants from non-Western countries often face opposition when they apply for development permission to build houses of worship, religious schools, or other religious and cultural infrastructure. [31] For example, as this research documents, proposals by Muslims, Jews, and Hindus have been rejected by residents as 'religious fundamentalism', 'divisive', and 'un-Australian'. Muslims in particular have been affected by such dynamics that repeat stereotypes about Muslims as 'threatening'.[32] Although planning law is not meant to consider such statements, this research shows that such prejudice can nonetheless find its way into planning considerations with planning authorities ultimately rejecting applications as being 'out of character' in the local area, as undermining local amenity, as contravening the heritage of the local area, or as not being in the public interest.[33] This research highlights how the population is able to mobilise and manipulate certain laws to enforce exclusionary visions of community and belonging at a local level, which risks reinforcing perceptions that some religions and cultures belong more to Australia than others.[34] Although courts have been important in reviewing such

[31] See e.g. Dunn K (2005) Repetitive and Troubling Discourses of Nationalism in the Local Politics of Mosque Development in Sydney, Australia. *Environment and Planning D*.(23): 29-50; Bugg LB (2013) Citizenship and Belonging in the Rural Fringe: A Case Study of a Hindu Temple in Sydney, Australia. *Antipode* 45(5): 1148-1166; Connell, John, and Kurt Iveson. "An Eruv for St Ives? Religion, Identity, Place and Conflict on the Sydney North Shore." *Australian Geographer* 45, no. 4 (2014): 429-46; Laura Bugg & Nicole Gurran (2011) Urban planning process and discourses in the refusal of Islamic Schools in Sydney, Australia, *Australian Planner*, 48:4, 281-291.
[32] Dunn, Kevin M. "Representations of Islam in the Politics of Mosque Development in Sydney." *Tijdschrift voor economische en sociale geografie* 92, no. 3 (2001): 291-308.
[33] Villaroman, Noel G. "'Not in My Backyard': The Local Planning Process in Australia and Its Impact on Minority Places of Worship." *Religion and Human Rights* 7, no. 3 (2012): 215-39; Thorpe, Amelia. "Between Rights in the City and the Right to the City: Heritage, Character and Public Participation in Urban Planning." In Heritage, Culture and Rights. Challenging Legal Discourses. Edited by Andrea Durbach and Lucas Lixinski. Oxford; Portland: Hart, 2017.
[34] See note above. This problem is not unique to Australia: Valverde, Mariana. *Everyday law on the street: City governance in an age of diversity*. University of Chicago Press, 2012.

planning decisions, given the lack of a comprehensive protection of human rights, including the right to freedom of religion, not all appeals have been successful.[35] Such problems are not limited to religious and cultural minority groups. Social housing, for example, can also face such community backlash and contribute to the further marginalisation of already marginalised groups.[36]

28. Studies have highlighted the crucial role that local law plays in managing diversity in an inclusive way.[37] Promoting a sense of belonging and thereby fostering social cohesion therefore must be considered not only a Commonwealth affair but one that requires the involvement of, and cooperation between, all levels of government.

Further steps to reinforce social cohesion

29. Drawing upon a holistic and more robust understanding of social cohesion, this section reviews each element of social cohesion (participation, belonging, trust, legitimacy) and equity, to identify further laws, policies and programs which may reinforce social cohesion. It does this holistically, and is not limited to further steps to address the issue of radicalisation towards violent extremism or terrorism. Instead, it looks more broadly at how laws, policies and programs may reduce factors such as: discrimination, victimisation, 'cultural homelessness', and feelings of not-belonging and insignificance. It is the reduction of these negative elements, which enhances social resilience. Social resilience, in turn, reduces the chances of radicalisation that may lead to violent extremism or terrorism. [38] But the link is not direct.

30. **Participation.** In this context, participation has two aspects. One relates to the ability of individuals to take part in, and actively engage with the community. The second aspect is concerned with the ability of individuals to take part in and influence public institutions and governance. Essentially, this reflects the 'horizontal' and 'vertical' distinction discussed above at paragraph [5]. Promoting participation in both domains is important and the Commonwealth government may have a role to play in each.

31. At the horizontal level, the Commonwealth government may play a facilitative role by supporting events and initiatives that tend to promote and strengthen

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[35] Riedel, Mareike, "The Difference a Wire Makes: Planning law, Public Orthodox Judaism and Urban Space in Australia," *International Journal of Law in Context* (2021), 1-19, https://doi.org/10.1017/S1744552320000415.

[36] See e.g. the discussion in Thorpe, Amelia. "Between Rights in the City and the Right to the City: Heritage, Character and Public Participation in Urban Planning." In Heritage, Culture and Rights. Challenging Legal Discourses. Edited by Andrea Durbach and Lucas Lixinski. Oxford; Portland: Hart, 2017.

[37] See e.g. the study of Toronto's municipal governance of diversity Valverde, Mariana. *Everyday law on the street: City governance in an age of diversity*. University of Chicago Press, 2012. See also Ruth Fincher, Kurt Iveson, Helga Leitner, Valerie Preston, "Planning in the multicultural city: Celebrating diversity or reinforcing difference?" 92 *Progress in Planning* 2014: 1-55,

[38] Lyons-Padilla, Gelfand, Mirahmadi, Farooq, and van Egmond (2015)

community bonds, and also by preventing certain behaviours that are likely to exclude or marginalise sections of the community.[39] While the Commonwealth government is obviously not the only relevant actor here, it does have a role in promoting participation. It could, for instance, strengthen the implementation of human rights, anti-discrimination laws, and encourage the States and Territory governments to do the same. It could increase funds to programs that encouraged a more welcoming attitude towards immigration and migrants.

32. The Commonwealth government also has an important role to play in encouraging participation in the vertical sense of participation in governance. One aspect of this is encouraging individuals to take part in national governance directly through the democratic process, by standing for Parliament, voting in elections, and campaigning for candidates. Working to support constitutional reform so that dual citizens can be elected as members for Parliament might be one initiative that would expand participation in national governance. Widening the franchise to include a great number of citizens abroad (particularly in light of delays returning home due to COVID-19), to prisoners, the homeless and young people, might be another positive initiative. Another aspect of encouraging participation is genuine community consultation and engagement when designing and implementing policy, as well as facilitating peaceful protests. Participation through consultation, engagement and protest is particularly important for those most directly affected.[40]

33. It is also important to consider how Commonwealth laws may affect participation. For example, our analysis of the *Foreign Influence Transparency Scheme Act 2018* (Cth) suggested that the legislation could undermine participation in Australia's democratic process by discouraging certain organisations from engaging in public debate or advocacy. Specifically, the combination of the broad scope of the conduct covered by the transparency scheme,[41] associated reporting requirements and obligations,[42] limited nature of some of the exemptions,[43] and potential criminal liability for failing to comply with the law[44] could lead some organisations to cease their advocacy efforts. This was a concern raised during a review of the bill.[45] If organisations such as charities cease their advocacy efforts, this would reduce public participation in governance as the voices of individuals and communities

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[39] See, eg, the prohibition of offensive behaviour based on racial hatred: *Racial Discrimination Act 1975* (Cth) pt IIA.

[40] For one example of a best practice approach in the area of public participation in policy design and implementation, see the 'Core Values for Public Participation' and 'IAP2 Public Participation Spectrum' tools on the International Association for Public Participation Australasia website: 'About IAP2 Australiasia', *iap2: international association for public participation* (Web Page) <https://iap2.org.au/about-us/about-iap2-australasia/>.

[41] See, eg, *Foreign Influence Transparency Scheme Act 2018* (Cth) ss 18(1), 20, 21.

[42] See, eg, *Foreign Influence Transparency Scheme Act 2018* (Cth) ss 34, 38.

[43] See, eg, *Foreign Influence Transparency Scheme Act 2018* (Cth) s 24.

[44] See, eg, *Foreign Influence Transparency Scheme Act 2018* (Cth) ss 57, 58.

[45] Eg Community Council for Australia, Submission No 34.1 to Parliamentary Joint Committee on Intelligence and Security, *Review of the Foreign Influence Transparency Bill 2017* (June 2018) 4.

whose interests and concerns they represent would have fewer opportunities to be heard. The interests and concerns represented by charities are some of the most marginal, excluded and vulnerable individuals in Australian society.

34. Our analysis of the *Public Service Act 1999* (Cth) noted similar concerns in relation to its potential restriction of the ability of federal public servants to participate in public debate. This is due to the operation of the Code of Conduct in that Act, particularly since the High Court decision in *Banerji*.[46] In both cases, reducing participation in this way could have a negative impact on social cohesion.

35. **Trust.** Similarly, 'trust' can have both horizontal and vertical dimensions. However, here we focus on the vertical dimension which covers individual confidence in government. We note that greater participation in the sense described above could reinforce trust in government, and therefore, that these principles can be mutually reinforcing.

36. One important aspect of trust in government is the perception that the government is effectively addressing the concerns and issues faced by the community. While there are certain issues where there is a significant imbalance between public concern and government action,[47] the government responsiveness to COVID-19 appears to have reversed a long-running trend of decreasing trust in government. Recent surveys suggest a significant increase in Australians' trust in the Commonwealth government since the start of the pandemic.[48] This has positive implications for social cohesion.

37. Further aspects of trust are the importance of transparency and accountability. Transparency here means the ability of Australians to inform themselves about the operation of the government. Accountability is the ability to hold government (or elements of the government) responsible for their actions. Lack of appropriate transparency and accountability may be corrosive of trust in government.

38. Importantly, Australia has some valuable processes in place to facilitate both. For example, representative government provides a level of accountability for the Parliament, and responsible government provides oversight of the government (at least in theory). Other elements such as an independent judiciary and the regime created by the *Freedom of Information Act 1982* (Cth) are important here too.

39. While there are important systems in place to ensure transparency and accountability, we note that there have been disturbing developments in recent

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[46] See *Comcare v Banerji* (2019) 93 ALJR 900.

[47] One prominent example where this disparity exists is on the issue of climate change: cf Annika Blau, 'What Australians really think about climate action', *ABC News* (online, 10 August 2020) <https://www.abc.net.au/news/2020-02-05/australia-attitudes-climate-change-action-morrison-government/11878510>; 'Australia', *Climate Action Tracker* (Web Page, 22 September 2020) <https://climateactiontracker.org/countries/australia/>.

[48] See, eg, Mark Evans et al, *Political Trust and Democracy in Times of Coronavirus: Is Australia Still the Lucky Country?* (Report, 20 July 2020) 12-3 <https://www.democracy2025.gov.au/documents/Is%20Australia%20still%20the%20lucky%20country.pdf>; Andrew Markus, *Mapping Social Cohesion 2020* (Report, 2021) 3.

years that undermine transparency and accountability in government. For example, recent reports suggest that the freedom of information regime[49] and the Australian National Audit Office [50] are under-funded. Further, the broad application of secrecy provisions in the national security context has had concerning implications for the freedom of the press and the ability to hold governments to account.[51] These and other developments[52] suggest government is currently prioritising a range of concerns over those of transparency and accountability. We argue that accountability and transparency are important long-term requirements for trust in government, and operate to reinforce and promote social cohesion.

40. In short, we want to highlight the importance of trust for reinforcing social cohesion. Trust in the Commonwealth government relies on the effectiveness of the government in responding to community concerns and issues, as well transparency and accountability in how the government operates. In addition, due to the subjective component of social cohesion, government must not only *be* effective, transparent, and accountable, but be *perceived to be* effective, transparent, and accountable. We recommend that any steps introduced to reinforce social cohesion in Australia take these considerations into account.

41. **Belonging.** This component captures the feeling of being part of the Australian community and touches on issues of national identity, personal identification, and acceptance by the community. Again, we note that the promotion of belonging may also reinforce the principles of trust and participation discussed above. Further, a broad and inclusive sense of national identity is important to promote a sense of belonging, given the diversity of the Australian community.

42. We support attempts by the Commonwealth government to highlight the diversity of Australia's national character, from the Aboriginal and Torres Strait Islander peoples with their deep historical ties to this continent, through the successive waves of migrants who have moved to Australia and made the country their home.[53] Such an approach is important for promoting a sense of belonging and reinforcing social cohesion in Australia.

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[49] Christopher Knaus, 'Australia's freedom of information regime heading for a "train smash", senator says', *The Guardian* (online, 8 January 2021) <https://www.theguardian.com/australia-news/2021/jan/08/australias-freedom-of-information-regime-heading-for-a-train-smash-senator-says>.

[50] Paul Karp, 'Coalition accused of trying to avoid scrutiny after audit office budget cut', *The Guardian* (online, 8 October 2020) <https://www.theguardian.com/australia-news/2020/oct/08/coalition-accused-of-trying-to-avoid-scrutiny-after-audit-office-budget-cut>.

[51] See, eg, Rick Sarre, 'Raids on reporters: How recent court decisions highlight the fragility of a free press' (2020) (June) *The Bulletin (Law Society of South Australia)* 12.

[52] For example, a long-awaited yet at present unrealised federal integrity commission: 'Time to move forward on a national integrity commission', *Transparency International Australia* (Web Page, 4 November 2020) <https://transparency.org.au/time-to-move-forward-on-a-national-integrity-commission/>.

[53] See, eg, 'About social cohesion', *Australian Government Department of Home Affairs* (Web Page) <https://www.homeaffairs.gov.au/about-us/our-portfolios/social-cohesion/about-social-cohesion>.

43. However, while government rhetoric often paints a broad and inclusive view of who belongs in Australia, we note a concerning trend (particularly in the law) which seeks to emphasise the exclusionary aspect of an Australian identity. The focus on Islamic radicalism and extremism and therefore on Muslims as potentially suspect communities carries the risk of entrenching anti-Muslim sentiments in public institutions and civil society, and of impacting negatively on Australian Muslims' daily lives and interactions.[54] Studies have repeatedly shown that Muslims in Australia already experience high levels of discrimination in their everyday lives with headscarf-wearing women and girls particularly vulnerable to abuse and vilification due their visibly Muslim identity.[55]

44. Laws that deprive dual citizens of their Australian citizenship for involvement in terrorist activities not only erode belonging, they lead to exile. While in extreme cases this may be appropriate, there is currently limited accountability and transparency over the process of citizenship deprivation. This erodes trust that Australian citizens have in their government institutions about fair and equal treatment. A consequence is that such laws are likely to marginalise all dual Australian citizens by eroding their sense of belonging.

45. **Equity.** Equity is an element of social cohesion raised in the report to the Victorian government and in the report by the New Zealand Royal Commission of Inquiry into the Attack on Christchurch Mosques (see paragraph 7 of this submission). Equity is a term that generally captures the idea of equality and the concept of fairness. It ensures that every person has access to the law and that the law treats all individuals according to the same legal rights and processes. Equality before the law reinforces trust between citizens and the government, and enhances the legitimacy of national institutions.

46. There is some debate in the literature as to whether equity is a component of social cohesion, or an antecedent condition. Chan et al for instance,[56] reject equity as a component and argue instead that it is an antecedent condition. However, due to its essential role in social cohesion, this submission takes the opportunity to include recommendations about how the Commonwealth should further support equity.

47. Effective anti-discrimination laws provide a safety net that ensures all individuals in a society are able to participate equally. However, there are some serious and substantial criticisms of Australia's anti-discrimination laws at both the Federal

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[54] For a sociological study of the impact of the War on Terror on Muslim citizenship and belonging in the United States see Selod, Saher. Forever Suspect. Racialized Surveillance of Muslim Americans in the War on Terror. New Brunswick: Rutgers University Press, 2018.

[55] Rosemary Bolger, 'Government condemns "appalling" cases of Islamophobia detailed in new report', *SBS News* (online, 18 November 2019) <https://www.sbs.com.au/news/government-condemns-appalling-cases-of-islamophobia-detailed-in-new-report>.

[56] See above (n 5).

and state level.[57] In particular, the effectiveness of the complaints and conciliation process for raising issues and changing cultures of discrimination has been the subject of critique.[58]

48. Laws that allow crimes to be tried and punished in secret without an individual having a chance to respond to the allegation, undermine formal equality before the law and equal treatment. They also undermine related elements of social cohesion such as legitimacy and trust. Whilst the introduction of such measures are currently justified on the basis of national security and community safety, their existence has a significant negative impact on a number of elements connected with social cohesion.

49. Effective anti-discrimination laws and equality before the law are, however, not sufficient to ensure equity. Equity also includes substantive equality or equality of outcomes. Substantive equality may, in some circumstances justify a departure from the principle of equal treatment. Departures are justified on the basis the continuing social barriers arising from past social bias and prejudice. For example, substantive equality justifies additional and targeted health and sport programs for women, and land grants to indigenous Australians. Without laws that enable access to additional benefits, historically marginalised community groups may find the equality of their participation diminished compared with other Australians. Inequality of outcomes can create disharmony between communities in a society, undermining social cohesion. Measures to enhance substantive equality and therefore social cohesion, might include reform targeted to create a stronger human rights culture and more robust mechanisms to ensure the rights of those who are historically marginalised are appropriately protected.

Terms of Reference 3d) '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.

50. Section 18C of the *Racial Discrimination Act* 1975 (Cth) ('RDA') currently prohibits expressions that incite racial hatred. The broad language in s18C provides basic protection against both speech and the use of symbols and insignia. Further steps that the Commonwealth could take to better disrupt and deter hate speech would

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[57] Nielsen, Jennifer. "Whiteness and anti-discrimination law--it's in the design." (2014) 10(2) *Critical Race & Whiteness Studies*

[58] Thornton, Margaret. "Equivocations of conciliation: the resolution of discrimination complaints in Australia." *The Modern Law Review* 52.6 (1989): 733-761; McNamara L. Tackling racial hatred: conciliation, reconciliation and football. *Australian Journal of Human Rights*. 2000 Sep 1;6(2):5-31; McNamara L. A profile of racial vilification complaints lodged with the New South Wales Anti-Discrimination Board. *International Journal of Discrimination and the Law*. 1997 Sep;2(4):349-78.

be to investigate reforms that would ensure that these provisions were more actively applied and enforced. Strengthening these laws would, in our view, reinforce social cohesion.

51. Contrary to what is sometimes publicly asserted, there is no right to free speech in Australia. To some extent, the Australian Constitution protects the free communication of ideas on the basis of the principle of representative democracy. It achieves this by ensuring that laws do not disproportionately impinge on an implied freedom of political communication. This is not an unbounded, unqualified freedom. The High Court has ruled that laws which limit communication are compatible with the implied freedom if they are appropriate and adapted to achieving a legitimate purpose.[59] Further, this is not an individual right to communicate, but a limit on the Parliament's ability to create laws stifling communication.

52. In relation to the conduct of Australian individuals, various laws also attempt to balance the protection of the free circulation of ideas with the protection of other rights, needs and interests. One vehicle for this the regulation of racial vilification, often referred to as 'hate speech'. Section 18C of the *Racial Discrimination Act 1975* (Cth) (RDA) prevents individuals from acting (including speaking) in 'public' in ways which 'offend, insult, humiliate, or intimidate' on the basis of 'race, colour or national or ethnic origin.' There are exceptions for anything done 'reasonably and in good faith' for a genuine purpose in the public interest (including academic work, art or scientific debate), in artistic works or 'fair comment' (section 18D).

53. The broad language used in the RDA has the capacity to address and regulate many instances of 'hate speech'. It currently has the capacity to regulate the display of symbols or insignia intended to incite violence towards other groups in society. There is some ambiguity however, about the extent to which vilification that targets religion is covered. It does this to some extent, as an early decision determined that 'Jewishness' was a 'race' for the purposes of the RDA. While this decision has meant that the RDA can apply broadly, it is unsatisfactory as it potentially leaves other religions beyond the scope of the RDA. This problem is particularly pertinent for Muslims who have reported vilification online and offline, and an increasing sense of insecurity after the Christchurch terror attack.[60]

54. This problem could be remedied in two ways: first, by acknowledging that Islamophobia constitutes a form of racism, an approach supported by research in

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[59] See, eg, *Comcare v Banerji* (2019) 93 ALJR 900, 912-5 [29]-[42] (Kiefel CJ, Bell, Keane and Nettle JJ).

[60] Judith Ireland, '"Never felt this unsafe": Muslim community pleads for more protection in religious discrimination bill', *The Sydney Morning Herald* (online, 8 March 2020) <https://www.smh.com.au/politics/federal/never-felt-this-unsafe-muslim-community-pleads-for-more-protection-in-religious-discrimination-bill-20200227-p544zs.html>; Tom Stayner, 'Australian Muslims call for more protection in religious discrimination bill', *SBS News* (online, 3 October 2019) <https://www.sbs.com.au/news/australian-muslims-call-for-more-protection-in-religious-discrimination-bill>.

Australia, Europe, and the United States[61] and increasingly adopted by public institutions.[62] Quite similar to antisemitism, Islamophobia constitutes a form of cultural racism that attaches a racial meaning to an identity primarily perceived in religious terms by essentialising Muslims as 'violent', 'foreign', 'backward', potential 'terrorists' and attacking them based on their 'Muslimness'. This approach acknowledges that Muslims as a religious group have been racialised and can therefore experience racial discrimination.

55. A second option is to create federal legislation that addresses the threat of religious vilification. We note that the debate about the drafting of a religious discrimination bill is ongoing and this could provide a valuable avenue of protection for Muslims and other religious groups that currently fall outside the purview of the RDA.

56. However, we also note the concerns raised against the current form of the draft bill that could allow religious organisations to discriminate against other religious beliefs, against LGBTQI+ people, and people with disabilities. The possible privileging of religion has the potential to undermine social cohesion. There is the risk of strengthening the majority religion at the expense of minority religions, thereby potentially weakening religious freedom in Australia. Moreover, privileging religion over other aspects of identity can impact on the sense of belonging and security of people identifying with and belonging to other types of groups.[63] It is therefore important that the drafting of a religious discrimination bill carefully considers and balances the significance of religious freedom in a democratic society with the needs and rights of other vulnerable groups in Australia's diverse society.

57. Another problem with the RDA is its ineffective implementation. The RDA relies on a complaints and conciliation model. This requires an individual to lodge a complaint and then engage in a process of conciliation with the person who was allegedly offensive. This places a considerable burden on individuals who has been the target of the communication, including knowing the law and having the time to make the complaint and pursue the issue. The ineffectiveness of these laws was recently illustrated by the lack of action taken in the display of the swastika in

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[61] Meer, Nasar, and Tariq Modood. "Refutations of Racism in the 'Muslim Question'." Patterns of Prejudice 43, no. 3-4 (2009): 335-54; Selod, Saher, and David G. Embrick. "Racialization and Muslims: Situating the Muslim Experience in Race Scholarship." Sociology Compass 7, no. 8 (2013): 644-55; Balibar, Etienne. "Is There a 'Neo-Racism'?" In Race, Nation, Class. Ambiguous Identities. Edited by Etienne Balibar and Immanuel Wallerstein. London; New York: Verso, 1991. See also: https://www.abc.net.au/religion/religion-and-the-racial-discrimination-act-dont-muslims-also-des/10098562.

[62] See eg, the working definition of Islamophobia proposed by the All Parliamentary Group of British Muslims that has been embraced by a number of local councils such as in London, Birmingham, and Manchester: 'The APPG on British Muslims', APPG (Web Page) <https://appgbritishmuslims.org/>.

[63] See eg, Michael Kirby, 'Religious "freedom" bill will divide Australians, not unite us', *The Sydney Morning Herald* (online, 26 February 2020) <https://www.smh.com.au/national/religious-freedom-bill-will-divide-australians-not-unite-us-20200225-p544bz.html>. Similar concerns have been raised in relation to a proposed religious discrimination bill in NSW: Liam Elphick and Alice Taylor, 'NSW needs to prohibit religious discrimination, but not like this' *The Conversation* (Web Page, 21 October 2020) <https://theconversation.com/nsw-needs-to-prohibit-religious-discrimination-but-not-like-this-148007>.

Beulah.[64] This is despite scholarly opinion that action under s18C would have been possible.[65]

58. It is possible that the ineffectiveness of these provisions is related to a public lack of commitment to these laws. The voices of those who advocate for 'free speech' have a clear message that is quickly understood and so has significant traction amongst a section of the public. By contrast, the voices in support of racial vilification laws are less frequently raised and assertively articulated. One reason may be a lack of understanding about the way that laws that prevent inciting racial hatred enhance social cohesion.

59. The *Racial and Religious Tolerance Act 2001 (Vic)* clearly captures why effective racial vilification laws are necessary for social cohesion. [66] The Victorian Equal Opportunity and Human Rights Commission notes that publicly communicated threats of violence and hatred undermines a sense of belonging and reduces the democratic participation of the individuals in targeted groups. Just as censorship can harm democracy, so can messages (either statements or symbols) which incite racial hatred. It is important that Australia reviews the balance that it strikes between these two means of supporting democratic participation, so that overall, social cohesion in our communities is supported.

60. The Commonwealth government could take steps to positively support the role that s18C plays in Australian society, and ensure better enforcement of those laws through undertaking reforms that remove barriers to its use.

Terms of reference 3b) 'Changes that could be made to Australia's Counter-Terrorism Strategy in relation to preventing radicalisation to extremist views, including the capacity for further partnership approaches with state, territory and local governments.'

61. Current CVE programs, which are often packaged as beneficial to social cohesion, have been detrimental to Muslim communities because they discriminate and alienate their at-risk young people.

62. Contemporary research examining CVE strategies designed specifically to address violent extremism in Muslim communities raises concerns that they may lack efficacy, leading to poor cooperation by Muslim communities and poor participation by young Muslims.[67] As such, there is a troubling knowledge gap

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[64] Simone F Koob, 'Nazi flag furore prompts move to tighten anti-vilification laws', *The Sydney Morning Herald* (online, 14 January 2020) <https://www.smh.com.au/national/victoria/disgusting-behaviour-premier-slams-couple-flying-nazi-flag-over-property-20200114-p53rao.html>.

[65] Tim Soutphommasane, 'The law against racial hatred that can't be used to stop the advocacy of Nazism', *The Sydney Morning Herald* (online, 18 January 2020) <https://www.smh.com.au/national/the-law-against-racial-hatred-that-can-t-be-used-to-stop-the-advocacy-of-nazism-20200117-p53sb6.html>.

[66] https://www.humanrights.vic.gov.au/legal-and-policy/victorias-human-rights-laws/racial-and-religious-tolerance-act/

[67] Sarah Aziz, F. "Losing the "War of Ideas": A Critique of Countering Violent Extremism Programs." Texas International Law Journal 52, no.2 (2017): 255-279; Nabeela Barbari, "Reconsidering CVE: The Unintended

between those operating at the grassroots, community-level, and those working in government and law enforcement agencies.[68] To bridge this gap, we recommend that it is the crucial government and law enforcement agencies re-examine their approaches to community engagement and community partnerships.

63. After engaging with Muslim communities in Melbourne and Sydney over four years, Jones showed that by developing respectful relationships and high levels of trust, communities are more willing to cooperate in the co-design of programs and take ownership of them, thereby encouraging their young members to participate.[69] Several other benefits were produced, including the creation of opportunities for communities to strengthen their existing capabilities and broaden their support networks to others outside their organisation, thus improving this aspect of social cohesion. Another significant insight was that alternatives to CVE programs are needed. Stopping acts of violent extremism is clearly important, so for programs to be effective, they must be designed in a way that is more socially inclusive. We found that a broader crime prevention focus that also targets underlying drivers of anti-social behaviours would be a better starting point.[70]

64. It was common for Muslim communities to express concerns about engaging in CVE programs. Often, they did not trust the intent of the programs and perceived them to be mechanisms for state surveillance, intelligence collection, and profiling. They were aware that government agencies funding or running CVE programs dressed them up as community outreach, community resilience or social cohesion initiatives, but they knew the real intent was largely to stop Muslim youth from becoming violent extremists. While all community representatives engaged in our research agreed that preventing violent extremism is an important objective, they felt that CVE programs were counterproductive because they lacked transparency, were discriminatory and divisive, and alienated vulnerable young Muslims from the broader Australian community. This is largely due to the direct targeting of this community group[71], which can potentially worsen underlying issues like

Consequences of Countering Violent Extremism Efforts in America." Homeland Security Affairs (2018); and Clarke R. Jones, "Effective Community Engagement: Back to the Basics to Counter Violent Extremism and Other Youth Crimes", in Shashi Jayakumar (ed.), Terrorism, Radicalisation & Countering Violent Extremism: Practical Considerations & Concerns, pp. 29-42, (2019). London: Palgrave Macmillan.

68 Barzegar, A., Powers, S., & El Karhili, N. Civic Approaches to Confronting Violent Extremism: Sector Recommendations and Best Practices (2016). Retrieved at https://www.britishcouncil.us/sites/default/files/civic_approaches_to_confronting_violent_extremism_-_digital_release.pdf on 22 July 2020.

69 Clarke R. Jones, "Effective Community Engagement: Back to the Basics to Counter Violent Extremism and Other Youth Crimes", in Shashi Jayakumar (ed.), Terrorism, Radicalisation & Countering Violent Extremism: Practical Considerations & Concerns, pp. 29-42, (2019). London: Palgrave Macmillan.

70 Clarke Jones, Hard to Reach or Don't Want to Reach? Understanding the Significance of Respectful Relationships and Trust to "Countering Violent Extremism", Manuscript under review for publication.

71 Brennan Centre for Justice. "Why Countering Violent Extremism Programs Are Bad Policy" (2019). Retrieved March, 26 2020 (https://www.brennancenter.org/our-work/research-reports/why-countering-violent-extremism-programs-are-bad-policy).

stigmatisation, marginalisation, and discrimination that often led to offending in the first instance.[72]

65. It is our view that attempts to work with communities will fail unless substantial efforts are made to establish respectful relationships, including the building of trust. In projects dealing with communities, particularly those 'hard-to-reach', where social change is a goal or a potential outcome, trust is a significant – if not the key – component of success. The first objective of any community program involving participation by young people should be to develop mutual respect and trust.

66. Despite efforts by some Muslim leadership to engage with police and government agencies, trust from these agencies appears to remain absent. The sporadic attempts by police and government to engage with hard-to-reach Muslim communities have resulted in few tangible results, largely due to their distrust, lack of respect, and unwillingness to work with those communities. The result is that young at-risk Muslims who attend youth centres tend to have no trust in police. As the police continues to view young Muslims as a risk rather than being at-risk, there is little chance for trust development. This stalemate means that the only support available to vulnerable young Muslims who attend their youth centres is from the sheikhs and volunteers who support the centres.

67. The distrust can also have a more disastrous impact on young Muslims. Research has found that crime can be a response to a generalised absence of trust.[73] Several young Muslims we engaged in focus groups felt that the police only see "Islam as criminal or as terrorists". This common perception can translate to a young person feeling ostracised and marginalised from broader society. [74] A sense of hopelessness can also push young people towards – amongst other things – depression, self-harm, suicide, or crime. In a search for a new identity and attachment, it can also make them vulnerable to recruitment by criminal or terrorist organisations.

68. Identity, as it relates to race, religion, and other social groups, plays a role in youth resilience.[75] Aspects of identity that are particularly important include perceptions of discrimination, perceptions of illegitimacy, cultural homelessness, and acculturation.

69. Lyons-Padilla, Gelfand, Mirahmadi, Farooq, and van Egmond surveyed Muslim Americans and assessed cultural identification (both to American and heritage

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72 Clarke R. Jones, Hard to Reach or Don't Want to Reach? Understanding the Significance of Respectful Relationships and Trust to "Countering Violent Extremism", Manuscript under review for publication.
73 Diego Gambetta, "Can We Trust Trust?", in Gambetta, Diego (ed.) Trust: Making and Breaking Cooperative Relations, (2000), pp. 213-235. Oxford: Basil Blackwell; Kelly, P. "Growing up as risky business? Risks, surveillance and the institutionalized mistrust of youth". Journal of Youth Studies, 6, (2010): 165-180. doi:10.1080/1367626032000110291.
74 Fernandes, F. L. "Youth gang members in Rio de Janeiro: The face of a 'lost generation' in an age of fear and mistrust". Bulletin of Latin American Research, 32, (2013): 210-223. doi:10.1111/blar.12030.
75 Motti-Stefanidi & Masten, 2013; Smokowski, David-Ferdon, & Stroupe, 2009

cultural groups), discrimination, lack of significance (i.e., lack of belonging, lack of meaningful existence), and support for radical groups, ideologies, and behaviour.[76] Results from this study indicate that respondents who felt culturally homeless *and* perceived discrimination felt less significant, which in turn led to increased support for radical groups, ideologies, and behaviour. Overall, these findings suggest that young people may be more vulnerable to radicalisation and violent extremism when their sense of significance is threatened.

70. Perceived discrimination refers to the feeling that oneself or one's group is treated unfairly by other people or groups in society. Research suggests that those who experience discrimination report more instances of violence and are at risk of joining a gang.[77] Among Belgian youth, perceived discrimination toward one's group was associated with higher reported incidents of political violence toward property such as political graffiti, throwing stones at police during demonstrations, and damaging property.[78] A study conducted with American and European Muslims suggests that both younger individuals and those that reported more discrimination were more likely to justify this violent behaviour.[79] Further, discrimination experiences may be linked to gang behaviour. Indeed, cross-cultural awareness and anti-racism educational strategies have been suggested as one way to reduce young people's engagement in gang activity. One explanation for the link between perceived discrimination and violent action is that discrimination triggers perceived injustice against the group. As Moghaddam's theory on radicalisation posits, perceived injustice is an initial step in the process of radicalisation.[80]

71. For young people, discrimination may serve as a catalyst for radicalisation through its impact on perceptions of injustice, threat (symbolic threat to the group's value system or realistic threat to power, jobs, and status), and uncertainty/lack of meaning ("Who am I and where do I fit in?"). In a recent study with 131 Dutch Muslim youth, perceived group discrimination impacted on levels of perceived injustice, threat, and emotional uncertainty - those who perceived more group discrimination reported higher levels of perceived injustice, threat, and emotional uncertainty.[81] In turn, perceived injustice, threat, and uncertainty led to increases in radical beliefs (ie., perceived illegitimacy of authorities, perceived ingroup superiority, distance from others, and societal disconnection) and ultimately impacted on violent intentions among these young people.

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[76] Lyons-Padilla, Gelfand, Mirahmadi, Farooq, and van Egmond (2015)
[77] Smokowski et al., 2009; White, 2007
[78] Pauwels & Schils, 2016
[79] Thomas, McGarty, & Louis, 2014
[80] Moghaddam's (2005)
[81] Doosje, Loseman, & van den Bos, 2013

72. It becomes even more complicated when young people feel "rejected by both minority and majority groups"[82]. When there is divergent information about one's cultural membership, a young person may have trouble achieving a solid cultural, ethnic, or religious identity[83]. If there are overwhelming contradictory demands growing up, these demands can consolidate to become a central risk factor in young people. These demands are more evident when contrasting ethnic cultures are present and especially when language differences and status discrepancies are involved. When young Muslims are marginalised through regular criticism and rejection, they may be forced to choose between one or the other and are punished whatever they choose. Having multiple identities and cultures, young Muslims can find themselves in a situation of cultural homelessness where they are torn between their origins or parents' origins, their religious beliefs, or their new homeland.[84] Research has found that "under unfavourable conditions" such experiences of cultural homelessness may result in "a pattern of emotional distress and psychological vulnerability".[85] If risk factors outweigh the protective factors found through social cohesion, then significant negative outcomes can result. In worst-case scenarios, young people can resort to crime or be recruited by criminal groups.[86]

73. On the flip side, police can be influential in shaping a young person's "sense of belonging and trust" in his or her community; "to the degree that police interactions communicate that individuals are a part of the society the police represent, these individuals will theoretically have stronger motivation to adhere to the law".[87] Therefore, cooperation with all communities, rather than avoidance of those that are hard-to-reach, should be an extremely urgent priority for governments and police.

74. Neighbourhoods and communities that are more connected and cohesive, where people get along and have informal social control, can also provide stability, promote wellbeing, and reduce externalising behaviours among youth.[88] In their

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82 Veronica N. Vivero and Sharon R. Jenkins. "Existential Hazards of the Multicultural Individual: Defining and Understanding "Cultural Homelessness"." Cultural Diversity & Ethnic Minority Psychology 5, no.1 (1999): 6-26. doi:10.1037/1099-9809.5.1.6.

83 Raquel C. Hoersting and Sharon R. Jenkins. "No Place to Call Home: Cultural Homelessness, Self-Esteem and Cross-Cultural Identities." International Journal of Intercultural Relations 35, no.1 (2011): 17-30. doi:10.1016/j.ijintrel.2010.11.005.

84 Saroglou & Mathijsen, 2007

85 Vivero & Jenkins, 1999, p 7

86 Barnert, E. S., Perry, R., Azzi, V. F., Shetgiri, R., Ryan, G., Dudovitz, R., Zima, B., & Chung, P. J. (2015). Incarcerated youths' perspectives on protective factors and risk factors for juvenile offending: A qualitative analysis. American Journal of Public Health (1971), 105(7), 1365-1371. doi: 10.2105/AJPH.2014.302228; see also Baglivio, M. T., Jackowski, K., Greenwald, M. A., & Howell, J. C. (2014). Serious, violent, and chronic juvenile offenders: A statewide analysis of prevalence and prediction of subsequent recidivism using risk and protective factors. Criminology & Public Policy, 13(1), 83-116. doi: 10.1111/1745-9133.12064

87 Ellis, et.al., 2018, p. 346

88 Benzies & Mychasiuk, 2009; Brumley & Jaffee, 2016; Hudley & Novac, 2007; Jain & Cohen, 2013; Massetti et al., 2011

work on risk and resilience, Werner and Smith found that resilient people have associations with positive mentors and participate in extracurricular activities.[89] Eccles and Barber examined the impact of involvement in extracurricular activities (ie., church, sport) among 1,259 American adolescents and found that involvement in pro-social activities was associated with more positive attachment/belonging to school, higher academic performance, and decreased risk behaviours.[90] Similarly, youth who engage in community activities may be more protected against violence and other externalising behaviours.[91] Further, adult support from the community may be particularly important among young people who experience bullying or those at risk for gang-related behaviour.[92] Those who are normally excluded from school may find connections via community support. What young people seek in gang membership can be cultivated in a healthy manner by way of engagement in extracurricular activities.[93] Community environments that are cohesive and stable and have opportunities to connect with pro-social adults and get involved with extracurricular activities can protect youth from a range of negative outcomes and help develop pro-social skills and other competencies in youth.

75. Overall, Jones' research demonstrates that taking a holistic approach through broader crime prevention strategies, rather than a CVE focus, allowed for a more non-judgmental approach, which respected the personal, cultural, and religious characteristics and needs of young people in Muslim communities. This, in turn, influenced positive program engagement with the Muslim communities. Trust was gauged through the quality of commitment, rapport, and relationships Jones developed with young people and their families.[94]

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[89] Werner and Smith (2001)

[90] Eccles and Barber (1999)

[91] Vieno, Nation, Perkins, & Santinello, 2008; Zeldin, 2004

[92] Merrin et al., 2015; White, 2007

[93] Sharkey et al., 2011

[94] Clarke R. Jones, Hard to Reach or Don't Want to Reach? Understanding the Significance of Respectful Relationships and Trust to "Countering Violent Extremism", Manuscript under review for publication.

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