

SUBMISSION TO THE INDEPENDENT NATIONAL SECURITY LEGISLATION MONITOR (INSLM)

Review of the definition of a 'terrorist act' in Section 100.1 of the *Criminal Code Act 1995* (Cth)

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EXECUTIVE SUMMARY

This submission by the Centre for Independent Studies (CIS) addresses the definition of a 'terrorist act' in Section 100.1 of the *Criminal Code Act 1995* (Cth), specifically in response to Questions 3 and 7 of the INSLM Issues Paper. It focuses on the requirement of 'motive' and argues this element should be removed entirely. Our argument rests on three key points:

- 1. Liberal democratic principles:** The current formulation risks entangling the state in adjudicating belief systems, thus undermining freedoms of thought, conscience, religion, and expression.
- 2. Operational effectiveness:** The rise of hybrid and grievance-driven threats has rendered the motive test unworkable in practice. It creates legal uncertainty and discretionary enforcement.
- 3. Proportionality and legal clarity:** A reformed definition based solely on conduct and purpose (intimidation/coercion) would enhance clarity, reduce discriminatory effects, and remain consistent with international obligations.

The persistence of vague or expansive categories of 'motive' risks undermining both operational effectiveness and public confidence in counterterrorism law. The current legal threshold is no longer fit for a threat environment characterised by hybrid ideologies, 'mixed motive' cases and cases of lone-actor violence.

The CIS therefore recommends that Section 100.1(1)(b) be repealed. A revised definition of a 'terrorist act' should focus solely on conduct and terrorist purpose. This would maintain the integrity of counterterrorism law, while reinforcing Australia's commitment to liberal democracy, pluralism and the rule of law.

1. INTRODUCTION

The Centre for Independent Studies (CIS) welcomes the opportunity to contribute to the INSLM's review of the definition of a 'terrorist act' in Section 100.1 of the *Criminal Code Act*

¹ The author is grateful for the advice of His Honour Judge James Renwick CSC KC in writing this submission. However, the views expressed in this submission are those of the author and the Centre for Independent Studies, and not those of His Honour.

1995 (Cth). This submission focuses on Questions 3 and 7 of the issues paper *Defining Terrorism* concerning the requirement of the ‘terrorist motive’.

The INSLM identifies the two requirements of a ‘terrorist act’ in the Code. First, there must be a ‘**terrorist purpose**’ that identifies the harm element of the offence. Second, there must be a ‘**terrorist motive**’ that identifies the intention to advance “a political, religious or ideological cause” (s.100.1(b)).

The CIS argues that the requirement of motive should be removed entirely from the definition; not only because it entangles the state in judging belief systems, but also because it is increasingly unworkable given the evolving threat landscape characterised by mixed and fluid ideologies. As the Issues Paper notes, unlike the element of ‘terrorist purpose’, the element of ‘terrorist motive’ does not come directly from international instruments or resolutions of the UN Security Council. Indeed, UN Security Council Resolution 1624 (2005) condemns “all acts of terrorism irrespective of their motivation” (para. 4.20).

A definition focused solely on **conduct** (the element of action or threat of action) and **purpose** (the intention to intimidate or coerce) would be more principled and would preserve safeguards for liberal democratic principles.

The definition of a ‘terrorist act’ affects not only the criminal law, but the broader relationship between the state and civil society. When motive remains an element of the definition, the state signals the kinds of beliefs it considers inherently dangerous which, in turn, has profound implications for freedom of religion, conscience and speech.

2. THE STATE SHOULD NOT CATEGORISE BELIEF SYSTEMS

Liberal principles

In a liberal democracy, the state should maintain neutrality towards competing worldviews and belief systems. The individual citizen must be free to hold and express diverse political, religious and ideological views, even when those views are offensive, unpopular or mistaken. The criminal law should intervene only when beliefs are expressed in harmful conduct.

The current ‘motive’ requirement in the Code violates this principle by requiring courts, prosecutors and police to make authoritative determinations about the nature of belief systems. This turns the state from being a neutral arbiter into an active participant in theological, political and philosophical debates.

Problems of definition

The Issues Paper reveals the practical problems created by this approach. Australian courts have provided “surprisingly little consideration of what [‘political’, ‘religious’ and ‘ideological’] mean in this context” (para. 4.30). This is not an oversight but reflects the difficulty of creating clear and principled distinctions between the three categories.

The concept of ‘ideological cause’ is particularly problematic. As the Issues Paper notes, none of the Australian terrorism cases have sought to define ‘ideology’ even though around 70 per cent of cases have involved acts described as having been carried out for “ideological” purposes (para. 4.46). Politics or religion — or both — were also identified as motives in all the ideological cases.

The Canadian study cited in the Issues Paper proposed a definition of ‘ideology’ as “a motivation based on a system of unshakeable beliefs that is judgmental of the way society is or ought to be, is intended to be propagated, and claims explanatory power” (para. 4.47). But this definition would encompass virtually any strongly-held worldview, from radical environmentalism to religious fundamentalism.

3. THE DILEMMA OF IMPACTS ON COMMUNITIES

The Issues Paper notes that where religion has been cited as a motive in sentenced terrorism cases (and this amounts to 95 per cent of all cases reviewed), all referred “to Islam or the accused distorted interpretation of Islam” (para. 4.41). Further, 26 of 31 listed terrorist organisations have self-proclaimed links to Islam (para. 4.42). In effect, the discourse around terrorism has become so associated with Islam that many Muslims feel “unfairly singled out by the discourse and practice of counterterrorism” (para. 4.39).

This impact extends beyond individual cases to broader social cohesion. As documented by the Islamophobia Register Australia, there are “disturbingly high rates of Islamophobia in Australia, with insults often drawing association between Muslims and terrorists” (para. 4.39). The inclusion of ‘religion’ as a terrorist motive might also inadvertently legitimise claims by extremist groups that acts of violence have the warrant of religious authority.

Australian criminal law: separating intention from motive

Thus, inclusion of ‘religion’ as a motive creates a significant dilemma: exclusion of religion entirely from terrorist laws means genuine cases of religiously-motivated terrorist acts could be missed; but inclusion will continue to have a discriminatory impact. This dilemma dissolves if the meaning of a ‘terrorist act’ focuses on conduct, intention and purpose rather than on underlying beliefs.

Such a reform is also consistent with Australian criminal law which holds that **intention** refers to a person's conscious decision to bring about a particular result by their actions. It means that the accused meant to produce a particular result by their conduct. By contrast, **motive** is the reason or underlying cause for those actions. Motive is generally not required to be proven for criminal responsibility. Even where it can help explain otherwise inexplicable conduct, motive alone cannot substitute for evidence of intent to commit an offence and does not itself establish guilt under Australian law.

4. THE CHALLENGE OF MIXED MOTIVES

The Issues Paper identifies the core problem that contemporary violent extremism often involves “a mix of one or more ‘terrorist motives’ and some other motive or motives such as personal grievance or desire for notoriety” (para. 4.51). Thus, the 2024 Annual Threat Assessment by the Director of ASIO noted that in the current environment “individuals are embracing anti-authority ideologies, conspiracy theories and diverse grievances. Some are combining multiple beliefs to create new hybrid ideologies” (para. 2.14).

The weakness of the current framework when dealing with ‘mixed motives’ was demonstrated by the **Lindt Café Seige** in 2014. Man Haron Monis's attack demonstrated the difficulty of distinguishing between ideological terrorism and personal grievance-driven violence. While Monis displayed an Islamic flag and made political demands, investigations revealed extensive personal grievances, mental health issues as well as a criminal history. The coronial inquest struggled to definitively categorize whether this was terrorism or a criminal act by a disturbed individual. Under a conduct and purpose-based definition, the focus would shift to whether his actions were intended to intimidate the public and coerce government.² This presents a much clearer question for prosecutors.

Operational uncertainty

In addition, the Issues Paper notes it is unclear whether, in the case of mixed motives, “advancing a political, religious or ideological cause needs to be a *substantial* purpose or a *dominant* purpose or if there is some other test” [italics in original] (para. 4.54). This uncertainty creates practical problems for law enforcement.

As the Issues Paper notes, “judgments on how to respond to ‘mixed motive’ cases are left to the discretion of police and prosecutors” (para. 4.56). This discretionary approach risks inconsistent application and may leave gaps in protection or create unnecessary deployment of extraordinary terrorism powers. The CIS submits that ambiguity around motive not only burdens investigators and prosecutors with interpretive discretion, but also diverts limited counterterrorism resources away from threat prevention toward debates over offender belief classification.

5. A NEW THREAT ENVIRONMENT: WE NO LONGER NEED A ‘MOTIVE’ ELEMENT

Previous reviews of the definition of a ‘terrorist act’ have largely supported retaining the motive element, as noted by the Issues Paper (para. 4.25). But these reviews have not adequately addressed the fundamental problems identified in this submission:

- **‘Special nature’ argument:** the claim that terrorist violence is “qualitatively different from other types of crime” conflates the distinctive features of terrorism (intimidation intended to influence government or society) with the underlying motives of perpetrators.

² “Inquest into the deaths arising from the Lindt Café siege”, New South Wales State Coroner Michael Barnes, (released 24 May 2017), [lindt_cafe_findings-and-recommendations.pdf](#)

- **‘Safeguard’ argument:** the assertion that motive “provides an important safeguard that limits the use of extraordinary measures” (para. 4.25) ignores how the broad categories actually expand rather than constrain the scope of the definition.
- **‘Public perception’ argument:** the suggestion that “terrorist violence is seen by the public as something distinctive from other serious crime” (para. 4.25) possibly mistakes cause for effect. Public perception is shaped by how the law defines terrorism, not the reverse.

The earlier reviews noted by the Issues Paper were also conducted before the current threat environment had emerged and been identified. This submission argues that the rise of ‘mixed ideologies’, ‘blended belief systems’ and grievance-driven violence requires fresh analysis of the definition of a ‘terrorist act’. As the Issues Paper also correctly notes, “No other comparable Australian offence requires a person’s motivation...to be proved as an element of the offence” (para. 4.24).

Australia’s international obligations

Removal of the motive element would also align with international instruments to which Australia is a signatory. As noted in para. 4.19, for example, the UN Security Council has condemned “all acts of terrorism irrespective of their motivation.” Here the focus is on conduct (such as causing death or serious injury) combined with purpose (such as intimidating populations or coercing governments) rather than underlying motivations.

The 2024 UN Counter-Terrorism Committee Executive Directorate guidance also emphasises that ‘terrorist purpose’ elements should distinguish terrorism “from other forms of violence ‘that would normally be regarded as terrorism, such as organised crime or hate crimes’” (para.1.13). This can be achieved through ‘purpose’ requirements (such as intimidating populations or coercing governments) without requiring investigation of underlying beliefs and ideologies.

Australia’s international obligations do not require terrorism to be defined by reference to political, religious or ideological motive. Key instruments such as **UN Security Council Resolution 1566** and the **Terrorism Financing Convention** focus on conduct (for example, causing death or serious injury) and purpose (for example, intimidating a population or compelling government), irrespective of motivation. Indeed, the **UN Counter-Terrorism Committee** has warned that overbroad definitions, especially those tied to vague or expansive motive categories, may undermine the principle of legality and violate human rights obligations.

Comparative practice in other liberal democracies also supports a shift toward a ‘conduct and purpose’-based model. For instance, **New Zealand’s Terrorism Suppression Act 2002** does not require proof of motive but instead defines terrorism through the intent to induce terror or coerce government by violent means.

Similarly, the **United Kingdom’s Terrorism Act 2000** focuses on purpose (for example, influencing government or intimidating the public) and harmful conduct, though it includes

some reference to ideological factors in prosecutorial policy rather than statutory definition. Similarly, the **Counter-Terrorism Act 2008** refers to motive primarily by targeting actions carried out for the purpose advancing a political, religious, racial or ideological cause. When harmful conduct results in death and the Crown brings a prosecution for murder, the question of motive is not a matter for the jury. However, in sentencing remarks, a judge may make reference to motive on the basis of evidence presented.

For example, in his sentencing remarks at the trial of Michael Adebolajo and Michael Adebowale, convicted of the murder of Drummer Lee Rigby in 2013, Sweeny J stated that the “barbaric murder” was carried out to advance an extremist cause and that the attack was executed with deliberate brutality going “far beyond what was needed to murder him.” The judge outlined the motive as being promotion of an extremist cause intended to incite further ideological conflict.³

Accordingly, the CIS argues Australia is not bound to retain motive as a *requirement* of the definition of a ‘terrorist act’, and the nation would remain consistent with international and peer standards if it were to adopt a narrower, more principled test focused on intent and action.

The United States takes a different structural approach to terrorism law. However, its emphasis on conduct-based thresholds for federal terrorism charges, especially in cases of domestic terrorism, similarly avoids the need to define or categorise ideological motive.

6. RECOMMENDED REFORMS

The CIS notes that Section 100.1 (1) (b) of the *Criminal Code Act 1995* (Cth) defines a ‘terrorist act’ as “an action or threat of action where... **(b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause.**”

The CIS recommends that this subsection (s.100.1 (1) (b) should be removed entirely. According to a revised Section 100.1, a ‘terrorist act’ would be defined as “an action or threat of action” where the action:

- falls within the harm categories in s.100.1 (2);
- the action is done with the intention of coercing or intimidating government or the public or a section of the public (s.100.1 (1) (c);
- but does **not fall** within the advocacy and protest exclusions in s. 100.1 (3).

The CIS submits that the distinctive character of terrorism lies not in the beliefs that motivate it, but in its **methods** – that is, the use of violence against civilians to create fear and to pressure governments or societies to change their policies or behaviour. This revised ‘**conduct and purpose**’ approach to defining a ‘terrorist act’ captures what makes terrorism distinctive without requiring the state to investigate the belief system of the individual.

³ R v Adebolajo & Anor [2014] EWCA Crim 2779, per Sweeney J.

The ‘terrorist purpose’ requirement of intent to coerce or intimidate also allows terrorist acts to be distinguished from ‘hate crimes’. Hate crimes typically target victims because of their membership in particular groups, but without the ‘terrorism characteristic’ of the broader political goal of intimidating society or coercing government. The element of ‘intention to intimidate’ the public also allows for the exclusion of violence motivated by ideology; such acts would be prosecuted under the general criminal law.

Operational clarity and practical impact

Removing the motive element would bring greater clarity to operational decision-making. Law enforcement agencies and prosecutors would no longer need to infer or categorise the ideological or religious beliefs of a suspect which is a process that is often speculative and subjective. Instead, the focus would shift to the conduct involved and the demonstrable intent to intimidate or coerce.

For example, in cases involving lone actors driven by personal grievances that overlap with vague anti-authority sentiments, the central prosecutorial question would become whether there was intent to intimidate the public or influence government, rather than whether the offender’s beliefs qualify as ‘ideological.’ This shift would help reduce uncertainty in ‘mixed-motive’ cases, promote consistency in applying terrorism powers, and help avoid both overreach and underreach in threat assessment.

Removal of the element of motive would require prosecutors to focus more carefully on proving terrorist purpose when preparing cases for prosecution. More sophisticated analysis of an offender’s statements and conduct would be required in order to establish rigorously the element of terrorist purpose. It would also give clearer guidance to police and prosecutors when deploying terrorism powers thereby reducing the current uncertainty around ‘mixed motive’ cases.

Advocates for the retention of motive argue that motive is what makes a terrorist act different from other types of criminal act and that removal of the element of motive creates the risk of overreach (para. 4.25).

However, this risk is minimised because the proposed revised definition retains the requirement to prove intent to intimidate or coerce. This effectively excludes from the definition of a ‘terrorist act’ violence motivated by personal grievance, profit or other non-political purposes. Further, the existing exclusion for advocacy, protest and dissent (s. 100.1 (3)) protects legitimate political expression. In addition, prosecutors retain discretion not to pursue terrorism charges where general criminal offences are more appropriate.

7. ADVANTAGES OF REFORM

The CIS submits that reform to Section 100.1 (1) (b) of the *Criminal Code Act 1995* (Cth) would confer significant benefits consistent with the principles of a plural liberal democracy. The proposed reform would:

1. **Restore state neutrality:** it would remove the state from making inappropriate judgments about the belief system of an individual while retaining an appropriate focus on harmful conduct.
2. **Eliminate discriminatory effects:** it would end the disparate impact on particular religious communities (most notably the Muslim community) because of the explicit reference to **religious** motivation in the legislation.
3. **Provide clarity for law enforcement:** it would eliminate uncertainty about how best to handle 'mixed motive' cases by focusing on conduct and demonstrable intent.
4. **Align with the principles of liberal democracy:** it would reinforce the principle that the state punishes intentional actions, not thoughts, ideas or beliefs.
5. **Maintain security effectiveness:** it would preserve the ability to prosecute and prevent terrorist activity while avoiding problems of definition that create operational uncertainty.

The CIS submits that the proposed reform would enhance protection for freedom of thought, conscience, religion, association and political expression by removing the state from the business of categorising belief systems. Elements retained in the Code (conduct, purpose, exclusions) will provide adequate safeguards against prosecutorial overreach. In addition, by reducing ambiguity in thresholds for prosecutors, and by aligning legal definitions more closely with contemporary threat typologies, the CIS submits that this reform would effectively enhance Australia's counterterrorism capacity without compromising civil liberties.

8. CONCLUSION

The 'terrorist motive' requirement represents a well-intentioned but increasingly unsustainable policy in a plural, multicultural society. By requiring the state to make determinations about belief systems, it violates fundamental liberal democratic principles of state neutrality in regard to different belief systems and world views. By explicitly referencing religion, it also has a potentially-discriminatory impact on Muslim communities. And by attempting to categorise fluid and overlapping ideologies and cases of 'mixed motive', it creates operational uncertainty that undermines effective law enforcement.

The CIS submits that rather than continue refining 'motive' categories, the more principled approach is to abandon the element entirely in favour of a **conduct** and **purpose** approach. This would create a more principled definition that focuses on the distinctive features of terrorism, namely its use of violence to intimidate and coerce, rather than the underlying belief systems.

By providing clearer guidance to police and prosecutors while removing the state from the task of adjudicating belief systems, this proposed reform would strengthen both the security and the liberty of the citizen. By ensuring that conduct rather than belief is

targeted, it would also help to strengthen social cohesion by restoring public confidence in terrorism laws.

The evidence from international jurisdictions, the practical challenges documented in mixed-motive cases, and the clear discriminatory impact on religious communities all point toward the same conclusion: the motive requirement has outlived its usefulness and now creates more problems than it solves.

The Centre for Independent Studies urges the Independent National Security Legislation Monitor to recommend removal of the 'terrorist motive' requirement from Australia's definition of 'terrorism'.

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