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Victorian Multicultural Commission

<https://www.multiculturalcommission.vic.gov.au/>

9 June 2021

Rebecca Falkingham
Secretary
Department of Justice and Community Safety
Level 26
121 Exhibition Street
Melbourne VIC 3000

By email: [REDACTED]
[REDACTED]

Dear Rebecca

Re: Submission on Stage Two of the *Review of the Terrorism (Community Protection) Act 2003*

The Victorian Multicultural Commissions (VMC) thanks you and the Department of Justice and Community Safety for the opportunity to provide a considered and community safety centred feedback on the Stage Two of the Review of the *Terrorism (Community Protection) Act 2003* (The Act).

The VMC understands that submissions have been invited from a wide cross section of the community, including community and non-Government organisations as well as academic institutions and subject matter experts, some of whom we have consulted with in preparing this submission.

Context

The VMC acknowledges the critical responsibility of relevant entities, including the Commonwealth and Victorian Governments to ensure the security and safety of Australia and its people. The VMC also acknowledges the concerted efforts and collaboration of all levels of government, community organisations and law enforcement agencies in protecting all Victorians.

Noting also that while legislation and the powers that are provided to law enforcement agencies are an important pillar in the defence against terrorism, balancing the extraordinary powers with the protection of the community's civil and fundamental human rights with appropriate safeguards is also critical. This was an important component of the thinking when the Act was first introduced in 2003, during the subsequent reviews and in parliament's considerations of the Act as referenced in the Issues Paper and remains undiminished now.

Finding the right balance between the provision of extraordinary powers and safeguarding measures is critically important as the outcomes have the potential to either adversely or positively impact on the democratic underpinnings of our society and on our social cohesion and harmony.

It is heartening to note from the Issues paper that the extraordinary powers provided through the Act have been sparingly utilised since 2014 ("one preventative detention order and six covert search warrants having been issued", p9-10). That is perhaps indicative that the combination of the protections and safeguards in place and law enforcement agencies being mindful of the extraordinary nature of the powers and the importance of civil rights.



Issues

The VMC has a number of specific and general issues in relation to matters raised for comment in the Issues Paper:

Need for the Act & Safeguards

- a) Given the threat assessment, as outlined in the Issues Paper, the need to protect the community and therefore the Act unfortunately remains. However:
- the sunset clause of the Act needs to be retained and be extended for a further ten years with a mandatory 5-year review involving stakeholders, experts and a diverse range of community groups.
 - the safeguards within the Act be retained and where appropriate strengthened. It is vital that security and law enforcement agencies continue to have checks and balances on their powers to survey, prevent, and prosecute terrorist activities.
 - the application of the powers within the Act be applied: without bias and prejudice; and proportionate to the threat assessment.
 - it is also important that the powers within the Act do not infringe on social cohesion and harmony nor impinge on the freedoms and values that we safeguard, in the absence of a Bill of Rights.

Children & Young people


- b) Children and young people are known to be targeted by violent extremists with the potential for disproportionate and long-lasting harm. They are vulnerable to radicalisation and may not have the depth, expertise, maturity to discern misinformation, disinformation, and propaganda from fact. As such:
- the age of criminal responsibility needs to be lifted to 14 years of age.
 - appropriate protections and safeguards need to be provided to children and young people, including an independent person or special advocate being present at any interview or intervention.
 - the Commission for Children and Young People, the Victorian Equal Opportunity and Human Rights Commission, the Public Interest Monitor and where appropriate a special advocate from the community need to be engaged in the design, application and review of the legislation and the protective measures as applicable to children and young people.
 - while not in the scope of this review and the Act, post release support mechanisms are of paramount importance to address the wellbeing of the detained and providing appropriate support and guidance.

Pause mechanism for detention decisions

- c) The Issues Paper references the Commonwealth's *Crimes Act 1914* where pause clauses exist. The *Charter of Human Rights and Responsibilities Act 2006* ss21(4), (5) is referenced in the Issues Paper with respect to a pause mechanism intersecting with a detained person's rights such as the right not to be arbitrarily detained as well as the right of any person arrested or detained to be brought promptly before a court." (p18). As such:
- any pause mechanisms would need to be clearly defined, mindful of the detained person's wellbeing, where possible consensual, with a maximum upper limit defined, application made before the Supreme Court and the involvement of the Public Interest Monitor and a special advocate from the community.

The threat of Right-Wing Extremism

- d) The VMC welcomes the Director-General of the Australian Security Intelligence Organisation's (ASIO) acknowledgement of the threat of lone actors and right-wing extremism as a major



concern¹. This signals a broadening of the focus of Australia’s security apparatus to threats beyond violent extremism from one segment of the community. The growing security threats, notably from right-wing extremism and lone actors, as evidenced in the Issues Paper, requires greater attention.

- e) The suite of extraordinary measures aimed at preventing terrorism and protecting all Victorians should be used sparingly. The VMC appreciates that at the time these measures were introduced and extended, they were acknowledged to be extraordinary and caution against their normalisation. As noted in the Issues Paper (and earlier), it is encouraging that the Act has been used sparingly since 2014.

Special Police powers

- f) The VMC has some concerns in relation to expanding circumstances in which special powers may be extended in relation to prominent persons. There are already policies, protocols and practices in place for the protection of prominent persons and any expansion would need to be justified, particularly as they have the potential to impact on the public’s rights within a democratic society. Consistent with the reference in the Issues Paper of the Law Council of Australia’s position for the importance of laws to be “certain and clear”, any consideration of an expansion of powers will need greater clarification or definitions on: the activities covered; who may be defined as a prominent person; and the provision of independent safeguards.

Community Education

It is often cited that the community provides the best protection against violent extremism. This proposition is built on genuine engagement and trusting relationships between civil society organisations, communities and law enforcement agencies. As such, it will be important that should the Act be extended and amendments to the powers enacted, that community leaders and stakeholders be appropriately briefed, covering the provisions of the Act and the safeguards provided.

Conclusion

Consistent with its domestic and international obligations, the VMC acknowledges that it is vital to achieve a proportionate and effective balance between the government’s commitment and obligations to protect its citizens and its commitment and obligations to preserve, protect and promote citizens’ fundamental human rights.

Equally, it is important that Victoria protects the gains it has made in social cohesion and community harmony. A human rights framework and overlay will strengthen counter terrorism and national security laws in Australia by appropriately balancing the various obligations.

If you would like to discuss any aspect of this submission, please do not hesitate to reach out either to me on [REDACTED]

Yours sincerely



Vivienne Nguyen
Chairperson
Victorian Multicultural Commission

¹ See <https://www.asio.gov.au/publications/speeches-and-statements/director-generals-annual-threat-assessment-2021.html>