2025-2026

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

COMBATTING ANTISEMITISM, HATE AND EXTREMISM BILL 2026

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Attorney-General, the Hon Michelle Rowland MP)

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COMBATTING ANTISEMITSM, HATE AND EXTREMISM BILL 2026

GENERAL OUTLINE

1. The Combatting Antisemitism, Hate and Extremism Bill 2026 (the Bill) represents a comprehensive package of reforms which would further criminalise hateful conduct, and ensure that those that seek to spread hate, division and radicalisation are met with severe penalties. The Bill would also expand powers to allow the cancellation or refusal visas to those who spread hate and division in Australia, or who would do so if they were granted a visa to enter Australia. In addition, the Bill would set up the national firearms buyback scheme and introduce a range of firearms amendments relating to the control, management and possession of firearms.

2. These changes would implement the measures announced by Government on 18 December 2025 and respond to the criminal law related recommendations of the Special Envoy to Combat Antisemitism. These reforms are necessary to address the rising levels of antisemitic and other hate speech, violence and extremism in Australia.

3. The Bill will complement previous reforms targeting the rise in hate fuelled conduct. This includes the offences for advocating or threatening force or violence against groups, banning Nazi salutes and hate symbols, targeting extremism through laws against possessing or sharing violent extremist material and the creation of a framework to list state sponsors of terrorism.

4. The Bill contains five schedules of amendments:

    - Schedule 1 contains amendments to legislation regarding criminal law
    - Schedule 2 contains amendments to migration laws
    - Schedule 3 contains customs amendments
    - Schedule 4 contains amendments to firearms-related legislation, and
    - Schedule 5 contains transitional rules.

SCHEDULE 1 – Amendments of legislation relating to the criminal law

5. Schedule 1 would primarily amend the *Criminal Code Act 1995* (the Criminal Code), as well as the *Crimes Act 1914* (Crimes Act) and other associated criminal law legislation.

6. This includes creating aggravated offences for sections 80.2A, 80.2B, 80.2BA, 80.2BB, 80.2BC, 80.2BD, and 80.2BE, punishable by up to 12 years imprisonment, where a person commits an offence and the conduct is engaged in by the offender in their capacity as a religious official or spiritual leader (however described) providing pastoral care or religious instruction.

7. The proposed amendments would also increase penalties in the Criminal Code, including the penalties for hate crimes offences in sections 80.2A, 80.2B, 80.2BA, 80.2BB, 80.2BC, 80.2BD, and 80.2BE from 5 years to 7 years imprisonment, and the penalties for hate crimes offences in sections 80.2A, 80.2B, 80.2BA, 80.2BB, 80.2BC, 80.2BD, and

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80.2BE from 7 years to 10 years imprisonment, where that conduct threatens the peace, order and good government of the Commonwealth. Additionally, the proposed amendments would increase the penalty the offence in section 471.12 for using a postal or similar service to menace, harass or cause offence from 2 years to 5 years.

8. Schedule 1 would provide that, in determining a sentence, a court must—if the conduct was targeted at a person distinguished by race or national or ethnic origin—regard that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates.

9. Additionally a new legislative framework would be introduced in new Part 5.3B to enable the Australian Federal Police (AFP) Minister to recommend the specification (listing) of an organisation as a prohibited hate group where the Minister is satisfied on reasonable grounds that the organisation has directly engaged in, prepared or planned to engage in, or assisted the engagement in, conduct constituting a hate crime targeted at a person or persons distinguished by race or national or ethnic origin, or advocated engaging in conduct constituting such a hate crime; and specifying the organisation is reasonably necessary to prevent social, economic, psychological and physical harm. Under new Division 114B of part 5.3B, new criminal offences for directing the activities of, membership of, recruiting for, training involving, providing support to or getting funds to, from or for a prohibited hate group.

10. Schedule 1 also creates a new criminal offence in Division 80 for publicly promoting or inciting hatred toward another person or group on the grounds of race, colour or national or ethnic origin, or for the dissemination of ideas of superiority over or hatred of another person on the grounds of race, colour, or national or ethnic origin, where that conduct would cause a reasonable targeted person to fear harassment, intimidation or violence, or for their safety.

11. Schedule 1 creates aggravated offences for sections 80.2A, 80.2B, 80.2BC, 80.2BE, and 474.45B, where an adult commits an offence and the conduct is directed at a person under 18 years of age.

12. Schedule 1 would strengthen the public display of prohibited hate symbols offences in section 80.2H and 80.2HA by:

    - reversing the burden of proof so a defendant is required to present evidence, in the first instance, that the public display of a prohibited hate symbol was for a legitimate purpose

    - amending the offences for the public display of, or trade in, prohibited organisation symbols in sections 80.2HA and 80.2JA to enable the offence to be proven by showing a person was reckless as to whether the symbol was a prohibited organisation symbol

    - amending section 80.2E to replace the title of ‘prohibited terrorist organisation symbol’ with ‘prohibited organisation symbol’ and expand the list of symbols captured in the definition to include symbols of prohibited hate groups

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- replacing the reasonable person test in section 80.2H and 80.2HA with a new test that considers the perspectives of a reasonable person who is a member of a group of persons distinguished by race, religion or nationality

- amending the directions power in section 80.2K to allow police to issue a direction to an individual publicly displaying a prohibited symbol on the internet, and

- introducing a power to allow police to seize a prohibited hate symbol if it is publicly displayed in Division 80, to complement the existing power to direct a person to remove the symbol from display at section 80.2K.

SCHEDULE 2—Migration amendments

13. Schedule 2 to the Bill amends the *Migration Act 1958* (the Migration Act) to insert new grounds that specifically address hate-motivated conduct and conduct or offences relating to the spread of hatred and extremism.

14. The character grounds will enable the Minister administering the Migration Act to exercise their discretionary powers under section 500A and section 501 of the Migration Act to refuse to grant, or to cancel, a visa where any of the following circumstances apply:

    - the person is, or was, a member of or associated with (where that association has provided support to) an organisation that was, at any time of the membership or association, a terrorist organisation, state sponsor of terrorism, or prohibited hate group;

    - the person has been or is involved in conduct constituting a 'hate crime' (as defined in section 114A.3 of the Criminal Code), whether or not that person, or another person, has been convicted of an offence constituted by the conduct;

    - the person has made or endorsed one or more public statements (in Australia or overseas), including online, or has encouraged one or more persons to make such a statement, that involves the dissemination of ideas based on superiority over or hatred of other persons on the basis of race, colour, or national or ethnic origin, and the person's conduct may give rise to a risk of harm to the Australian community or a segment of the Australian community.

15. These amendments provide new and specific grounds that will expressly capture hate-motivated conduct and offences relating to the spread of hatred and extremism in the Criminal Code as the basis for the visa decision. The intention is that these new grounds will address the risks that a non-citizen may pose to the safety of the Australian community through conduct that promotes hatred and extremism, including in circumstances where community risk is evident, or a hate crime has been committed, but there is no criminal justice outcome.

16. The amendments to the character test and to the grounds for refusal or cancellation of temporary safe haven visas, add to existing grounds that address the risk of a person engaging in certain conduct, including vilification, inciting discord, or activities that represent a danger to the Australian community, if they were allowed to enter or remain

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in Australia. Significantly, these amendments do not introduce any new powers under sections 500A or 501 of the Migration Act or expand the existing powers for the refusal or cancellation of a visa that are provided for under subsections 500A(1) or (2) or 501(1), (2), (3), and (3A), or 501A, 501B, or 501BA. The amendments also do not modify the existing framework for the application of the rules of natural justice under subsections 501(1) and (2) or the exclusion of the rules of natural justice under section 500A or subsections 501(3) and (3A) of the Migration Act. The intention is to broaden the circumstances in which a non-citizen may have their visa refused or cancelled on the basis that the Minister administering the Migration Act is satisfied (subsection 501(1)) or reasonably suspects (subsections 501(2) and (3)) or is of the opinion (section 500A) that they have engaged in conduct that relates to hate, vilification, or extremism.

17. Schedule 2 to the Bill also amends Schedule 5 to the Migration Regulations 1994 (the Migration Regulations) to extend the application of Special Return Criterion 5001 to any person refused a visa under sections 501, 501A, or 501B of the Migration Act, unless the refusal has been revoked or the Minister administering the Migration Act has subsequently personally granted a permanent visa to the person. This has the effect that a person refused a visa under sections 501, 501A, or 501B is permanently excluded from being granted a visa.

18. These amendments to the Migration Act and the Migration Regulations are intended to strengthen border controls to protect the Australian community from non-citizens who spread division, hatred, and extremism.

SCHEDULE 3 – Customs amendments

Part 1 – Prohibited material

19. Currently, the export and import controls available to prohibit the export or import of violent extremist material and prohibited symbols, and goods within which these materials or symbols are contained, are limited in their scope. Objectionable goods are currently defined under regulation 3 and regulation 4A of the Customs (Prohibited Exports) Regulations 1958 (Prohibited Exports Regulations) and the Customs (Prohibited Imports) Regulations 1956 (Prohibited Imports Regulations) respectively to cover a range of publications and goods including those that are considered to offend against the standards of morality, decency and propriety generally accepted by reasonable adults such as through their depiction of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena or by promoting the misuse of specific drugs. Objectionable goods also include publications or goods that promote, incite or instruct in matters of crime or violence or advocate the doing of a terrorist act. However, the definitions do not currently explicitly capture violent extremist material or prohibited symbols.

20. The proposed amendments would insert new subregulation 3(2AB) into the Prohibited Exports Regulations and new subregulation 4A(1AB) into the Prohibited Imports Regulations which amends the definition of objectionable goods to include goods that:

    - are violent extremist material (within the meaning of the Criminal Code); or
    - are or depict prohibited symbols (within the meaning of the Criminal Code); or

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- contain such goods.

21. These amendments would ensure that export and import prohibitions covering objectionable goods capture violent extremist material and prohibited symbols, and goods that contain extremist material and prohibited symbols. The violent extremist material and prohibited symbols that are subject to export or import control are physical things (for example a computer, flag, mobile phone or other electronic devices that hold these things) as defined under those terms in the Criminal Code.

22. Under these controls, the export and import of "objectionable goods" is currently prohibited unless permission to export or import those goods are given by the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995* or the goods are being exported or imported by a police officer for the purposes of criminal investigation or law enforcement (including criminal prosecution).

23. Additional proposed amendments would introduce a new exemption under subregulations 3(4) and 4A(2) which will have the effect that the prohibition on the export or import of objectionable goods as defined in regulations 3 and 4A are not enlivened if the conduct of exporting or importing the objectionable good is for a purpose covered by subparagraph 80.2H(9)(a)(i) or 80.2H(9)(b)(ii), or paragraphs 80.2H(10)(a) to (e), of the Criminal Code. These include:

    - for a religious, academic, educational, artistic, literary or scientific purpose (subparagraph 80.2H(9)(a)(i) of the Criminal Code); or

    - for the purposes of making a news report, or a current affairs report, that is made by a person working in a professional journalistic capacity (subparagraph 80.2H(9)(b)(ii) of the Criminal Code); or

    - a range of purposes related to criminal justice and law enforcement such as for the purposes of proceedings in a court or tribunal, for monitoring compliance and for the investigation and enforcement of a law (paragraph 80.2H(10)(a) to (c) of the Criminal Code); or

    - for the performance of public duties or functions where the conduct is reasonable in the circumstances (paragraph 80.2H(10)(d) to (e) of the Criminal Code).

24. As a result of these amendments, Australian Border Force (ABF) officers would have the authority to seize these objectionable goods as a prohibited good and take appropriate enforcement action against the importer or exporter for breach of customs laws where an applicable exemption does not apply. These changes strengthen the ability of the ABF to prevent extremist material entering and leaving Australia, and reinforces Australia's commitment to combating violent extremism and hate-based ideologies.

25. Section 233 of the *Customs Act 1901* (Customs Act) also makes it an offence to export or import any prohibited goods punishable upon conviction with a penalty not exceeding 3 times the value of the goods or 1,000 penalty units, whichever is greater. An offence under this section is a strict liability offence and does not require a fault element for any of the physical elements of the offence. Section 233BAA of the Customs Act provides for a further special offence with increased penalties relating to the import or export of tier 1 goods. A person commits an offence under this section if they intentionally export or

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import a prohibited tier 1 good and are reckless as to that fact with a penalty of imprisonment for 5 years or 1,000 penalty unites, or both.

26. Schedule 7 to the Customs Regulation 2015 provides for a table of drugs and other goods classified as tier 1 goods. Proposed amendments to table item 22 would have the effect that a good that is an objectionable good but is not an item of child abuse material is prescribed as a tier 1 good. This change would remove the current reference to "commercial quantity of objectionable goods" and would operate to capture all goods that are objectionable goods, including, to the extent not covered by an exception, goods that are violent extremist material or prohibited symbols, and goods that contain violent extremist material or prohibited symbols, irrespective of their quantity.

27. These proposed changes would expand the range of penalties that can be imposed by a court where a person exports or imports an objectionable good without the requisite permission or having met an exemption. Advancements in technology and information storage have also rendered the commercial quantity condition obsolete, with modern storage devices capable of storing large volumes of objectionable material, however under existing legislation each individual device is considered one individual good. The existing strict liability offence under section 233 remains available where offending only meets the physical elements of the offence. A term of imprisonment up to 5 years for offences under section 233AB will be available where appropriate for the most serious offending.

Part 2 – Powers relating to instruments

28. Part 2 of Schedule 3 makes technical amendments to section 4A of the Customs Act to clarify neither of the following are legislative instruments:

    a) a form or statement approved as mentioned in section 4A;

    b) an instrument approving a form or statement as mentioned in section 4A.

29. This Part also makes technical amendments to sections 50 and 112 of the Customs Act to clarify that regulations made for the purposes of sections 50 and 112 may confer on the Minister administering the Customs Act the power to make provision in relation to a matter by legislative instrument.

SCHEDULE 4 – Firearms amendments

Part 1 – National gun buyback

30. Part 1 of Schedule 4 proposes new provisions to establish a national gun buyback scheme to governments to purchase surplus and newly restricted firearms. Consistent with the approach taken in the 1996 national gun buyback scheme, this scheme is facilitated through a coordinated national framework where the Commonwealth provides financial assistance to the States (which is defined to include the Australian Capital Territory and the Northern Territory) to support their respective implementation of the national gun buyback scheme by way of reimbursements. The proposed measures in support of the national buyback scheme will create a framework that is able to share the costs of the national gun buyback scheme with participating jurisdictions. The Australian Federal

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Police (AFP) will work in partnership with the states and territories to destroy surrendered firearms.

31. Under the mechanism in section 16 of the *Federal Financial Relations Act 2009* (the FFR Act), a Treasury Minister makes a determination under the FFR Act in relation to a State in respect of reimbursement of 'qualifying compensation' paid by the State. This measure provides that 'qualifying compensation' is compensation paid during the buyback period by a State under a compensation scheme set up by the State. It also provides that each State's compensation scheme is subject to the approval of the AFP Minister, ensuring consistency, transparency and fairness in implementation of the national gun buyback scheme.

32. Part 1 of Schedule 4 would establish a legislative framework for the national gun buyback scheme, supported by the FFR Act and *Federal Reform Fund Act 2008*, that recognises the split of responsibility between the Commonwealth and the States. Payments will be made in accordance with the terms and conditions set out in the Federation Funding Agreement schedules between the Commonwealth and the States. Payments made under these frameworks uphold accountability and ensure the integrity of public funds paid to States through the included safeguards. While other relevant financial assistance and payments can be made to States under the FFR Act, the framework also includes specific provisions allowing payments in connection to the national firearms program to be made to entities other than the States, outside the FFR Act. To maintain strict fiscal discipline and parliamentary oversight, this expenditure is subject to an overall limit established via a notifiable instrument, to be registered on the Federal Register of Legislation to ensure public transparency.

33. Part 1 of Schedule 4 also makes consequential amendments to the *Income Tax Assessment Act 1997* to amend the definition of ***firearms surrender arrangements*** to include the national firearms program. The amendments ensure that compensation payments a taxpayer receives under the national gun buyback scheme are not assessable for income tax purposes.

Part 2 – Firearms background checks

34. Part 2 of Schedule 4 would establish legislative heads of power in the *AusCheck Act 2007* (AusCheck Act) that would, in turn, enable the standing up of a Commonwealth background checking framework to support State and Territory Governments to identify and manage risks to security and the advancement of serious and organised crime, in connection with firearms licensing.

35. The resulting framework would be facilitated by AusCheck, the Commonwealth background checking authority, and would draw on intelligence held by the Australian Security Intelligence Organisation (ASIO) and the Australian Criminal Intelligence Commission (ACIC) concerning security and serious and organised crime, respectively. The framework would also enable AusCheck to facilitate a citizenship verification check in limited circumstances. Consistent with all other AusCheck background checking frameworks, the Part 2 of Schedule 4 would also provide a head of power for regulations to be made to prescribe a range of matters, such as the process, information requirements (including in relation to consent for checks) and types of advice given for these checks. In addition, the amendments contain proposed provisions for deemed consent in circumstances where a national or law enforcement agency requests a background check.

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These more detailed matters concerning the operation of the framework would be settled in consultation with the States and Territories.

36. The Commonwealth background checking framework would complement the existing ability for national security agencies, such as ASIO and the ACIC to share intelligence with State and Territory partners on matters relating to security and serious and organised crime. ASIO and the ACIC will continue to share classified intelligence with States and Territories for these purposes, including concerning firearms-related risks.

Amendments to the AusCheck Act relating to the facilitation of background checks for firearms related purposes

37. Part 2 of Schedule 4 would amend the AusCheck Act to enable regulations to be made to establish a new Commonwealth background checking scheme. It is proposed that AusCheck, the national background checking authority administered by the Department of Home Affairs would facilitate a firearms background check at the request of State and Territory firearms licencing authorities (FLAs) for individuals who are applying for, or renewing, their firearms license.

38. In line with this, it is proposed that a firearms background check may consist of one or more of the following: a criminal intelligence assessment by the ACIC under section 54C of the *Australian Crime Commission Act 2002* (ACC Act), a security assessment by the ASIO under section 37 of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), and, in limited cases, an Australian citizenship check conducted by AusCheck.

39. Part 2 of Schedule 4 contemplates that regulations would be required to operationalise this new scheme. Accordingly, the amendments contain a head of power that enables regulations to be made to cover the breadth of operational issues, such as the form of an application, the information required to be contained in an application for a firearms background check (including in relation to consent for the check), the manner of conducting a check, criteria against which applications are assessed, forms of advice to be given back to applicants, etc. This approach aligns with the current model of the AusCheck framework, and provides necessary adaptability for Commonwealth, State and Territory agencies to collaborate on how the exact scheme and associated processes would work.

40. Part 2 of Schedule 4 provides that background checks may be conducted in connection with:

- a decision under a law of a State or Territory about whether to issue a firearms licence, or otherwise relating to the issue of such a licence (including in relation to conditions)—this would ensure that background checks can be conducted to inform initial licence issuing decisions

- a decision about whether to renew, revoke, vary or suspend a licence—this would cover both ‘point-in-time’ checks connected with an application to renew a licence, as well as the provision of advice at any time to inform the potential revocation, variation or suspension of a licence

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- in relation to an individual who holds a firearms licence, an application by a law enforcement agency or a national security agency—this would ensure that, in addition to the ability for a firearms background check to be undertaken at any time to inform the proactive consideration of whether to revoke, vary or suspend a licence as outlined above, a check may also be undertaken at the express request of such agencies, for example, where new information has arisen that raises questions about whether a person should continue to hold a licence.

41. Part 2 of Schedule 4 also proposes adjustments to the information handling and protection provisions in the AusCheck Act that would ensure that information collected by AusCheck, which does not relate to the individual who is subject of a firearms background check, would not be retained or made further use of by AusCheck, beyond passing it along to national security agencies, like ASIO and ACIC, to provide context and help inform an assessment of the individual's risk profile as it relates to national security or serious and organised crime. The proposed amendments to information handling and protection provisions in the AusCheck Act are necessary given that firearms background checks would likely require the collection of an array of personal information about an individual and their family or associates.

42. Finally, the Part 2 of Schedule 4 would also amend the AusCheck framework to deem consent in order for national security and law enforcement agencies to initiative proactive 'own motion' firearms background checks. The combination of the ability for AusCheck to facilitate 'point-in-time' checks at the firearms licence application and renewal stages, as well as proactive 'own motion' checks at the request of ASIO and the ACIC, as well other national security and law enforcement agencies, would provide a high degree of flexibility to manage firearms-related security and serious and organised crime risks. In particular, agencies would have the ability to trigger a reassessment of an existing firearms license holder if new information, intelligence or concerns arise outside of the formal application and renewal cycle, including in situations where, at the point in time where the amendments in this Part of this Schedule commence, someone already holds an active firearms licence under State or Territory firearms legislation. This measure supports State and Territory decision making and protects public safety.

Amendments to the criminal intelligence assessment framework under the ACC Act, including to enable ACIC to participate in the AusCheck firearms background check framework

43. Part 2 of Schedule 4 would amend the ACC Act to repeal Division 2A of Part II to the ACC Act and introduce a revised criminal intelligence assessment framework under a new Part III to the ACC Act. These amendments would deliver targeted changes to strengthen the operation of the ACIC's criminal intelligence assessment framework and expand the scope of the framework, including to provide criminal intelligence assessments to AusCheck for the purpose of firearms background checks. Expanding the scope of ACIC's criminal intelligence assessment function to inform States and Territories' firearms licencing decisions will play a critical role in preventing the use of firearms in connection with serious and organised crime.

44. Division 1 of the new Part III of the ACC Act would outline the core definitions of the framework and make changes to key definitions which underpin the effectiveness of a criminal intelligence assessment. The definition of a ***criminal intelligence assessment*** would be amended to clarify the purpose of an assessment and make it simpler for ACIC

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to provide an assessment. The amended definition focuses on whether taking prescribed administrative action would assist to prevent the advancement of serious and organised crime, rather than whether the subject may commit a particular crime. This is complemented by the introduction of a new definition for ***serious and organised crime*** which would capture offences that may have been committed, may presently be being committed, or may be committed in the future. In recognition of the findings of the *Independent Review of the ACIC and associated Commonwealth law enforcement arrangements*, the inclusion of this temporal element aims to ensure the ACIC can be responsive to the threat of serious and organised crime, including by operating in an anticipatory or discovery phase of an investigation.

45. Division 2 of the new Part III of the ACC Act would continue to enable the ACIC to support the security of Australia's aviation and maritime sectors by making and giving criminal intelligence assessments for AusCheck background checks required or permitted by the *Aviation Transport Security Act 2004* (ATS Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFS Act) or regulations under those Acts. Importantly, the amendments would also expand the scope of the framework to enable the ACIC to conduct criminal intelligence assessments for a new AusCheck firearms background checking scheme. This would ensure that Commonwealth criminal intelligence holdings can be used to inform decision making on firearms licencing by FLAs.

46. Amendments in Part 2 Schedule 4 would also make changes to improve the flexibility and responsiveness of the ACIC's criminal intelligence assessment framework. It would introduce the ability for criminal intelligence assessments to be made and given for purposes related to background checks as prescribed in the Australian Crime Commission Regulations 2018. This recognises the pervasive nature of serious and organised crime and its infiltration across a growing variety of environments and sectors by enabling criminal intelligence assessments to be made for the purposes of background checks as appropriate.

47. Amendments in Part 2 Schedule 4 would also clarify that the ACIC can undertake criminal intelligence assessments on their own initiative at any time provided there is a connection to a current or previous background check of a person for purposes related to the ACIC's criminal intelligence assessment functions. This clarifies that the ACIC can undertake a criminal intelligence assessment where the ACIC becomes aware of information relating to a person, after an initial criminal intelligence assessment has been undertaken. The ability to conduct criminal intelligence assessments at ACIC's discretion will enable the ACIC to respond to new intelligence as appropriate, rather than solely at the point of an application or renewal application.

48. Part 2 Schedule 4 would also amend the ACC Act to provide that the requirement to notify a person of an adverse criminal intelligence assessment in respect of that person does not apply to assessments in relation to firearms licensing decisions, and that merits review in the Administrative Review Tribunal (ART) is not available in relation to such assessments. It is not intended that these amendments would displace the ACIC's obligation to afford procedural fairness to the subject of a potential adverse assessment, however, the extent of that obligation will continue to be dependent on the circumstances of a particular case. The Bill would also amend the ACC Act so that provisions to disapply notification and merits review would not apply in the circumstances prescribed

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by regulations. This would provide a mechanism for notification and merits review to be re-enlivened in particular circumstances. Consistent with existing requirements, notification requirements and the ability to apply for ART review of an adverse criminal intelligence assessment other than in the context of a firearms background check will remain.

49. These amendments would limit the potential disclosure of sensitive intelligence information in the firearms background check context and reflect the position set out in paragraph 1 of the National Firearms Agreement, that 'firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety', rather than an entitlement. All applicants would retain the right to seek judicial review of an adverse criminal intelligence assessment by ACIC and the AusCheck background check. Applicants would also retain the right to seek merits review of final firearms licence decisions at the state and territory level, subject to the laws of each jurisdiction.

50. Further amendments would clarify the use of automation for certain criminal intelligence assessments. Noting the high volume of criminal intelligence assessments made by the ACIC each year, it is necessary for the ACIC to make and give certain criminal intelligence assessments by way of automated decision making (i.e. a computer) in certain circumstances. This is in circumstances where no results are returned against a search for the applicant across certain ACIC intelligence holdings. Automated decision making is only used in isolation where it is beneficial to the applicant, for example, where the result is confirming that it is appropriate for the applicant to access certain secure environments from a criminal intelligence assessment perspective.

Amendments to the ASIO Act to support ASIO to participate in the AusCheck firearms background check framework

51. Under existing Part IV of the ASIO Act, ASIO can furnish security assessments in relation to, relevantly, the exercise of any power, or the performance of any function, in relation to certain decisions under a law of a State or Territory relating to firearms licensing. This assessment may include recommendations, opinions, or advice on whether issuing or revoking a license is consistent with security requirements, or whether security considerations make such action necessary or desirable. Amendments in Part 2 of Schedule 4 would clarify that ASIO may provide a security assessment in relation to decisions about whether to renew, revoke, vary or suspend a firearms licence, in addition to decisions about issuing or revoking such licences.

52. Part 2 of Schedule 4 would amend the ASIO Act to provide that the requirement to notify a person of an adverse or qualified security assessment in respect of that person, does not apply to assessments in relation to firearms licensing decisions, and that merits review in the ART is not available for such assessments. It is not intended that these amendments would displace ASIO's obligation to afford procedural fairness to the subject of a potential adverse or qualified security assessment, however, the extent of that obligation will continue to be dependent on the circumstances of a particular case. The Bill would also amend the ASIO Act so that provisions to disapply notification and merits review would not apply in the circumstances prescribed by regulations. This would provide a mechanism for notification and merits review to be re-enlivened in specified circumstances.

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53. Part 2 of Schedule 4 would also amend the ASIO Act to enable specified assessment action to be automated through use of a computer program. This would allow ASIO to use automated decision-making in circumstances specified in an instrument made by the Minister.

54. As with the corresponding amendments to the ACC Act, the amendments to Part IV of the ASIO Act would limit the potential disclosure of sensitive intelligence information and reflects the fact that holding a firearms license is a privilege rather than an entitlement. All applicants would retain the right to seek judicial review of an adverse or qualified security assessment by ASIO and an AusCheck background check. Applicants would also retain the right to seek merits review of final firearms licence decisions at the State and Territory level, subject to the laws of each jurisdiction.

Amendments to the Crimes Act to enable spent, pardoned and quashed conviction information to be used by ASIO, the ACIC and intelligence or security agencies for specified purposes

55. Divisions 2 and 3 of Part VIIC of the *Crimes Act 1914* (Crimes Act) regulate the disclosure, filing, recording and use of information concerning pardoned, quashed and spent convictions for Commonwealth and Territory offences.

56. Part 2 of Schedule 4 would amend the Crimes Act to provide that Division 2 (pardons and quashed convictions) does not apply in relation to:

- the disclosure of information to or by ASIO
- the filing or recording of information that comes into the possession of ASIO, or
- the use by ASIO of information,

for the purposes of the performance of ASIO's functions.

57. Part 2 of Schedule 4 would also amend the Crimes Act to provide that Divisions 2 (pardons and quashed convictions) and 3 (spent convictions) of Part VIIC do not apply in relation to:

- the disclosure of information to or by the ACIC
- the filing or recording of information that comes into the possession of the ACIC, or
- the use by the ACIC of information,

for the purposes of the ACIC's criminal intelligence assessment function.

58. Part 2 of Schedule 4 would further amend the Crimes Act to provide that:

- ASIO may use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, or information relating to a person having been charged with and found guilty of an offence but discharged without conviction, in the performance of its functions or the exercise of its powers

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- the ACIC may use or disclose such information in the performance of the ACIC's criminal intelligence assessment function, and

- an intelligence or security agency may use or disclose such information for the purpose of assessing prospective employees or members of the agency, or persons proposed to be engaged as consultants to, or perform services for, the agency or a member of the agency.

59. These amendments would expressly permit the use and disclosure of spent, pardoned and quashed conviction information by these agencies for these specified purposes, despite any restrictions in State or Territory legislation that would otherwise apply. The amendments expressly give rise to an inconsistency between the Commonwealth law and State and Territory laws, such that the Commonwealth law would prevail to the extent of the inconsistency. The amendments would enable ASIO, the ACIC and intelligence and security agencies to use and disclose information that it has obtained for the specific purposes outlined in the Bill. By limiting these authorisations to use and disclosure by these agencies for specified purposes, the protections of Part VIIC would otherwise be maintained.

60. The ability to use, record and disclose pardoned, quashed and spent conviction information is important for intelligence and personnel security purposes. Depending on the reasons for the pardoning or quashing of a conviction, information about that conviction may remain relevant from a security or criminal intelligence, or personnel security perspective. For example:

    - in a circumstance where a conviction for terrorism or serious and organised crime was quashed because of a legal or procedural error, rather than fresh evidence indicating innocence, the nature of the person's conduct may remain relevant for intelligence purposes, including for the purpose of considering whether the person should be granted or hold a firearms licence, or

    - in a circumstance where a person was convicted for serious fraud, and that conviction is now spent, the fact of that spent conviction may remain relevant when considering whether that person should be employed in or engaged by an intelligence or security agency, where the highest levels of trust in staff is required.

Consequential amendments in other Acts to support the operation of new Part III of the ACC Act and the AusCheck firearms background check framework

61. Division 3, Part 2 of Schedule 4 would make consequential amendments to the following Commonwealth Acts to support the operation of new Part III of the ACC Act and the AusCheck firearms background check framework:

    - *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act);

    - *Administrative Review Tribunal Act 2024* (ART Act);

    - AusCheck Act;

    - *AusCheck Regulations 2017* (AusCheck Regulations)*;*

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- *Australian Border Force Act 2015* (ABF Act);
- ATS Act;
- *Aviation Transport Security Regulations 2005* (ATS Regulations);
- Crimes Act;
- MTOFS Act;
- MTOFS Regulations;
- *Surveillance Devices Act 2004* (SD Act); and
- *Telecommunications (Interception and Access) Act 1979* (TIA Act).

62. Amendments to the ADJR Act, ART Act, AusCheck Act, AusCheck Regulations, ATS Act, ATS Regulations, MTOFS Act, and the MTOFS Regulations would ensure that definitions and references in these Acts to a criminal intelligence assessment conducted by the ACIC under current Part II Division 2A of the ACC Act are replaced with the relevant definitions and references in new Part III. This would enable the operationalisation of the new criminal intelligence assessment function by ensuring that the relevant Commonwealth frameworks are appropriately aligned.

63. Further amendments to the AusCheck Regulations would clarify that the specified regulations apply:

    - in relation to an application for a background check made on or after the commencement of regulation 45; and
    - an application for a background check made before the commencement of regulation 45 that had not been completed before that commencement.

64. In relation to a background check commenced but not completed before the commencement of regulation 45, amendments ensure that the specified regulations apply as if a reference to an adverse criminal intelligence assessment included a reference to a high-risk criminal intelligence assessment. This threshold will subsequently be removed by the consequential amendments in this Bill, in order to align with the broader changes relating to the criminal intelligence assessment provisions in the ACC Act.

65. Further amendments to the ATS Regulations and the MTOFS Regulations would clarify the application of the specified regulations in relation to:

    - an application for a background check, an issue of an Aviation Security Identification Card (ASIC) or Maritime Security Identification Card (MSIC), suspension of an ASIC or MSIC, issue of a disqualifying notice of a MSIC apply on or after the commencement of Part 2 of Schedule 4 to the Bill.
    - the cancellation of an ASIC, visitor identification card (VIC), temporary aircrew card (TAC) or MSIC on or after the commencement of that Part, whether the

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ASIC, VIC, TAC or MSIC was issued before, on or after that commencement Part 2 of Schedule 4 to the Bill.

66. Amendments to the ABF Act, Crimes Act, SD Act, and TIA Act would enable the ACIC to consider and use more information when making a criminal intelligence assessment. This includes:

- information obtained by the ABF using their own powers under the *Customs Act 1901*
- information gathered from materials seized under a search warrant
- information lawfully obtained from the use of a surveillance device or access to data under a computer access warrant
- lawfully intercepted information
- lawfully accessed information, and
- telecommunications data.

67. Amendments to Chapter 4 of the TIA Act would enable the ACIC to authorise the disclosure of telecommunications data for the performance of the ACIC's criminal intelligence assessment function. This would enable the ACIC to obtain information to assist to identify persons, and to determine whether persons have been in contact with one another, to resolve foundational intelligence questions when conducting a criminal intelligence assessment.

68. Amendments to the SD Act and the TIA Act would enable Commonwealth, State and Territory agencies to disclose sensitive information and documents, which may include personal information, to the ACIC for the purpose of making a criminal intelligence assessment. Amendments to the SD Act and the TIA Act would also enable the ACIC and ASIO to disclose information for the purposes of merits and judicial review, if required as part of a proceeding relating to a criminal intelligence assessment or security assessment. Further amendments to the TIA Act would enable an authorised officer of the ACIC to authorise disclosure of telecommunications data for the purpose of making a criminal intelligence assessment.

<u>Part 3 – Transmission of firearms information and other information to ACIC</u>

69. A new information sharing and disclosure framework to facilitate the automatic disclosure of firearms information and other prescribed information, collected by the Department of Home Affairs, including the ABF, to the ACIC which administers the National Firearms Register (NFR) and the National Criminal Intelligence System , would be established under proposed amendments that will repeal and replace section 273L of the Customs Act.

70. Subsections 273L(1) and (3) would confer powers to the Home Affairs Secretary and the Comptroller-General of Customs respectively to disclose firearms information (or other information prescribed by the regulations) that is contained in one or more electronic systems under the control of the Home Affairs Secretary or the Comptroller-General of

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Customs, to the ACIC CEO. Subsections 273(2) and (4) would permit disclosure to be arranged in the form of an automatic transmission of disclosable information to one or more electronic systems under the control of the ACIC CEO. Section 273L would constitute an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 under Schedule 1 to the *Privacy Act 1988.*

71. "Firearms information" subject to disclosure would be defined under subsection 273(5) as information relating to firearms or other goods relating to firearms (including firearms frames, firearms receivers and firearms sound suppressors), and that such information may include the following:

    a) information relating to the import or export of the firearms or other goods;
    b) information relating to licences or permits (however described) for the firearms or other goods;
    c) personal information or other information in relation to one or more persons.

72. Additional information that may be prescribed by the regulations to be able to be disclosed under section 273L must be information relating to goods that are not firearms or other goods relating to firearms, and may include:

    a) information relating to the import or export of the goods;
    b) information relating to licences or permits (however described) for the goods;
    c) personal information or other information in relation to one or more persons.

73. Currently section 273L of the Customs Act governs the entry and transmission of information by computer and provides that, where this is required or permitted under the Act, it may be in an encoded form chosen by the Comptroller-General of Customs. These provisions would be carried into the new section 273M of the Act with changes that would assign different responsibilities for determining the encoded form (where required) to the Comptroller-General of Customs and the Home Affairs Secretary. The Home Affairs Secretary or the Comptroller-General of Customs would be responsible for determining the encoded form of information in relation to firearms information (or other information prescribed by the regulations) subject to automatic transmission to one or more electronic systems under the control of the ACIC CEO.

74. New section 273M would substantially replicate current section 273L but would expands it to cover information that would be disclosed by the Home Affairs Secretary or the Comptroller-General of Customs.

<u>Part 4 – Public safety tests for firearms and weapons</u>

75. The importation of firearms and certain weapons into Australia is primarily governed under Schedules 6 and 13 to the Prohibited Imports Regulations. Part 2 of each respective schedule categorises those firearms and weapons to which the Prohibited Imports Regulations apply. Importation of a firearm or weapon of a kind mentioned in Schedule 6 or 13 is prohibited under the Prohibited Imports Regulation unless, amongst other requirements, the importation is in accordance with the requirements set out for the category of firearm or weapon in the schedule.

76. The proposed amendments would insert new regulations 4FA and 4HA into the Prohibited Imports Regulations to establish a public safety test for firearms and weapons.

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These tests would be applicable by discretion of the Minister administering the Prohibited Imports Regulations to assess the importation of goods to which regulations 4F and 4H apply (firearms and certain weapons) and concern whether the importation of the firearm or weapon poses a risk to the health, safety or security of the public or a segment of the public, which includes emergency services personnel. The Minister administering the Prohibited Imports Regulations would be required to make rules, by legislative instrument, for and in relation to whether the importation of a firearm or a weapon poses a risk to the health, safety or security of the public or a segment of the public. That Minister may also, at any time, require the person importing the good to give to the Minister any information that the Minister reasonably requires for the purpose of assessing the importation of the good against the public safety tests.

77. The intent of these amendments is to provide the Minister administering the Prohibited Imports Regulations with the authority to further consider whether an importation poses a significant risk to the health, safety or security of the public or a segment of the public. This would ensure that, while certain firearms and weapons may be legal to possess and use domestically, where they may not be suitable for the intended use within the community there is an ability to refuse import permission.

Part 5 – Importation of firearms

78. The importation of firearms into Australia is primarily governed under the Prohibited Imports Regulations. Schedule 6 to the Prohibited Imports Regulations classifies all prohibited firearms and related articles into different categories listed as items under Part 2 of Schedule 6. Importation of a firearm, and related articles, of the kind mentioned in Schedule 6 is prohibited under the Prohibited Imports Regulation unless, amongst other requirements, the importation is in accordance with the requirements set out for that item in the Schedule.

79. The proposed amendments to Schedule 6 requirements would tighten import controls on the following firearms and related articles where elevated risks have been identified:

- Assisted repeating action and straight pull repeating action firearms
- Firearms which are operated using belt-fed ammunition
- Magazines with a capacity of more than 30 rounds
- Frames and receivers
- Skirmish markers
- Sound suppressors and
- Speed loaders.

80. The proposed amendments to the Prohibited Imports Regulations would introduce definitions for assisted repeating action and straight pull repeating action firearms and would impose import requirements for these firearms in line with existing requirements for the importation of semi-automatic firearms. Import permission requirements would be introduced for firearms that can be operated using belt-fed

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ammunition in line with existing requirements for the importation of firearms that have a fully automatic firing capability. Importation of magazines with a capacity of more than 30 rounds for any firearm would be restricted and importation could only occur where the importation complies with one of the prescribed tests. A further restriction will apply to speed loaders designed to reload a firearm or firearm magazine with ease and speed.

81. New identification and serial number requirements would also be applied to frames and receivers, in line with the existing requirements for complete firearms. Serialisation and identification would also be a requirement for the importation of sound suppressors. To meet the identification requirements for frames, receivers and sound suppressors, these goods would be subject to visual inspection upon importation – as per current requirements for firearms.

82. The proposed amendments to the Prohibited Imports Regulations would introduce a new definition for ***skirmish markers*** which encompass goods commonly known as airsoft handguns, airsoft rifles, airsoft shotguns, blasters, gel blasters or gel ball blasters. New item 14B of Schedule 6 would impose the police certification test for importation of skirmish markers that are not substantially the same in appearance as a fully automatic firearm or to which a firearm accessory is attached or integral. Additional measures will impose serial number, identification and safety testing requirements, as per all other firearms imported into Australia.

83. The official purposes test, when complied with, grants import permission for a range of articles in Schedule 6. Proposed amendments to the specified person test would introduce an additional requirement that the importer has produced evidence that they are an Australian citizen. The purpose of this amendment is to ensure national consistency following commitments by State and Territory governments to limit firearms licences to Australian citizens. Allowing for the importation of firearms by non-citizens poses a risk to community safety, as those individuals will not be able to be holders of firearms licences.

84. The "dealer test-category H article" test in Part 1 of Schedule 6 of the Prohibited Imports Regulations would be replaced with a new "handgun test". This test remains applicable to all articles in Part 3 that required the dealer test-category H test. The new handgun test would allow the Minister administering the Prohibited Imports Regulations to give permission for the importation of an H category article only if they are satisfied the importer meets certain requirements and that the importation complies with that test. The purpose of this amendment is to ensure national consistency for the importation of handguns and removes the certification requirements from State and Territory policing.

<u>Part 6 – Approved forms for police certification for firearms imports</u>

85. The amendments contained in Part 6 of Schedule 4 would amend the police certification tests to remove the use of open-ended permits for the importation of firearms and weapons under the Prohibited Imports Regulations. The importation of firearms and weapons could still be obtained through the use of an individual permit for each import.

86. Firearms that can be imported on compliance with the police certification test require the importer to be given a statement, in an approved form, by a relevant police representative to the effect that the importer holds a licence or authorisation according to the law of the relevant State or Territory to possess the article (or that a licence or authorisation is not

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required). This is currently facilitated through approved forms which provide ongoing import permission for firearms for a given period of time. The proposed amendments to the police certification test would invalidate open ended approved forms on or after the commencement of the Bill. Importers relying on these forms would no longer have import permission. New approved forms detailing specific firearms and related goods (parts, ammunition, etc) for import would need to be obtained for the purposes of complying with the police certification test in Schedule 6.

87. The proposed amendments to the Schedule 6 police certification test would be replicated in the police certification test for weapons in Schedule 13 to the Prohibited Imports Regulations. It would render a statement made in approved form for the open-ended import of some weapons would have no effect in relation to the importation of a good on or after the day the Bill commences.

Part 7 – Offences relating to use of carriage service for firearms and explosives manufacture material

88. Part 7 of Schedule 4 would amend the Criminal Code and Crimes Act to create new offences for using a carriage service to access, provide access, possess, or control, material that instructs, supports, or facilitates the manufacture or modification of a firearm, firearm accessory, firearm part, firearm magazine, ammunition, or an explosive or other lethal device.

Part 8 – Ammunition Equipment

89. The importation of firearms into Australia is primarily governed under the Prohibited Imports Regulations. Schedule 6 of the Prohibited Imports Regulations classify all prohibited firearms and related articles into different categories listed as items under Part 2 of Schedule 6. Importation of a firearm, and related articles, of the kind mentioned in Schedule 6 is prohibited under the Prohibited Imports Regulation unless, amongst other requirements, the importation is in accordance with the requirements set out for that item in the Schedule.

90. Amendments to the Prohibited Imports Regulations will introduce a definition of ***ammunition equipment***, being an item that is designed to be worn on any part of the body for the specific purpose of allowing the wearer to readily access ammunition to increase the speed of reloading, and which can hold more than 30 rounds of ammunition. Ammunition equipment does not extend to items that can carry ammunition but were not designed for that purpose.

91. Amendments will impose import requirements for ammunition equipment, and importation can only occur where they comply with one of the prescribed tests.

SCHEDULE 5 – Transitional rules

92. Schedule 5 would allow the Minister administering the *Australian Federal Police Act 1979* or the Minister administering the *Administrative Review Tribunal Act 2024* to make rules prescribing transitional matters relating to the amendments or repeals made by the Bill.

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FINANCIAL IMPACT

93. The total indicative cost of the national gun buyback scheme is still to be determined, but it is likely to be significant. Costs will be appropriated out of the Federation Reform Fund and Consolidated Revenue Fund, as appropriate.

94. The costs of the national gun buyback scheme will be funded on a cost sharing basis, with the Commonwealth sharing the costs of the scheme with the states and territories, through reimbursements.

95. The majority of the payments are expected to be made in the 2026-27 financial year.

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STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Combatting Antisemitism, Hate and Extremism Bill 2026

1. This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

2. The Combatting Antisemitism, Hate and Extremism Bill 2026 (the Bill) represents a comprehensive package of reforms which would further criminalise hateful conduct, and ensure that those that seek to spread hate, division and radicalisation are met with severe penalties. The Bill would also expand powers to allow the cancellation or refusal visas to those who spread hate and division in Australia, or who would do so if they were granted a visa to enter Australia. In addition, the Bill would set up the national firearms buyback scheme and introduce a range of firearms amendments relating to the control, management and possession of firearms.

3. These changes would implement the measures announced by Government on 18 December 2025 and respond to the criminal law related recommendations of the Special Envoy to Combat Antisemitism. These reforms are necessary to address the rising levels of antisemitic and other hate speech, violence and extremism in Australia.

4. The Bill will complement previous reforms targeting the rise in hate fuelled conduct. This includes the offences for advocating or threatening force or violence against groups, banning Nazi salutes and hate symbols, targeting extremism through laws against possessing or sharing violent extremist material and the creation of a framework to list state sponsors of terrorism.

5. The Bill contains five schedules of amendments:

- Schedule 1 contains amendments to legislation regarding criminal law
- Schedule 2 contains amendments to migration laws
- Schedule 3 contains customs amendments
- Schedule 4 contains amendments to firearms-related legislation, and
- Schedule 5 contains transitional rules.

SCHEDULE 1 – Amendments of legislation relating to the criminal law

6. Schedule 1 would primarily amend the *Criminal Code Act 1995* (the Criminal Code), as well as the *Crimes Act 1914* (Crimes Act) and other associated criminal law legislation.

7. This includes creating aggravated offences for sections 80.2A, 80.2B, 80.2BA, 80.2BB, 80.2BC, 80.2BD, and 80.2BE, punishable by up to 12 years imprisonment, where a person commits an offence and the conduct is engaged in by the offender in their capacity

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as a religious official or spiritual leader (however described) providing pastoral care or religious instruction.

8. The proposed amendments would also increase penalties in the Criminal Code, including the penalties for hate crimes offences in sections 80.2A, 80.2B, 80.2BA, 80.2BB, 80.2BC, 80.2BD, and 80.2BE from 5 years to 7 years imprisonment, and the penalties for hate crimes offences in sections 80.2A, 80.2B, 80.2BA, 80.2BB, 80.2BC, 80.2BD, and 80.2BE from 7 years to 10 years imprisonment, where that conduct threatens the peace, order and good government of the Commonwealth. Additionally, the proposed amendments would increase the penalty the offence in section 471.12 for using a postal or similar service to menace, harass or cause offence from 2 years to 5 years

9. Schedule 1 would provide that, in determining a sentence, a court must—if the conduct was targeted at a person distinguished by race or national or ethnic origin—regard that fact as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates.

10. Additionally a new legislative framework would be introduced in new Part 5.3B to enable the Australian Federal Police (AFP) Minister to recommend the specification (listing) of an organisation as a prohibited hate group where the Minister is satisfied on reasonable grounds that the organisation has directly engaged in, prepared or planned to engage in, or assisted the engagement in, conduct constituting a hate crime targeted at a person or persons distinguished by race or national or ethnic origin, or advocated engaging in conduct constituting such a hate crime; and specifying the organisation is reasonably necessary to prevent social, economic, psychological and physical harm. Under new Division 114B of part 5.3B, new criminal offences for directing the activities of, membership of, recruiting for, training involving, providing support to or getting funds to, from or for a prohibited hate group.

11. Schedule 1 also creates a new criminal offence in Division 80 for publicly promoting or inciting hatred toward another person or group on the grounds of race, colour or national or ethnic origin, or for the dissemination of ideas of superiority over or hatred of another person on the grounds of race, colour, or national or ethnic origin, where that conduct would cause a reasonable targeted person to fear harassment, intimidation or violence, or for their safety.

12. Schedule 1 creates aggravated offences for sections 80.2A, 80.2B, 80.2BC, 80.2BE, and 474.45B, where an adult commits an offence and the conduct is directed at a person under 18 years of age.

13. Schedule 1 would strengthen the public display of prohibited hate symbols offences in section 80.2H and 80.2HA by:

    - reversing the burden of proof so a defendant is required to present evidence, in the first instance, that the public display of a prohibited hate symbol was for a legitimate purpose

    - amending the offences for the public display of, or trade in, prohibited organisation symbols in sections 80.2HA and 80.2JA to enable the offence to be proven by showing a person was reckless as to whether the symbol was a prohibited organisation symbol

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- amending section 80.2E to replace the title of 'prohibited terrorist organisation symbol' with 'prohibited organisation symbol' and expand the list of symbols captured in the definition to include symbols of prohibited hate groups

- replacing the reasonable person test in section 80.2H and 80.2HA with a new test that considers the perspectives of a reasonable person who is a member of a group of persons distinguished by race, religion or nationality

- amending the directions power in section 80.2K to allow police to issue a direction to an individual publicly displaying a prohibited symbol on the internet, and

- introducing a power to allow police to seize a prohibited hate symbol if it is publicly displayed in Division 80, to complement the existing power to direct a person to remove the symbol from display at section 80.2K.

SCHEDULE 2—Migration amendments

14. Schedule 2 to the Bill amends the *Migration Act 1958* (the Migration Act) to insert new grounds that specifically address hate-motivated conduct and conduct or offences relating to the spread of hatred and extremism.

15. The character grounds will enable the Minister administering the Migration Act to exercise their discretionary powers under section 500A and section 501 of the Migration Act to refuse to grant, or to cancel, a visa where any of the following circumstances apply:

    - the person is, or was, a member of or associated with (where that association has provided support to) an organisation that was, at any time of the membership or association, a terrorist organisation, state sponsor of terrorism, or prohibited hate group;

    - the person has been or is involved in conduct constituting a 'hate crime' (as defined in section 114A.3 of the Criminal Code), whether or not that person, or another person, has been convicted of an offence constituted by the conduct;

    - the person has made or endorsed one or more public statements (in Australia or overseas), including online, or has encouraged one or more persons to make such a statement, that involves the dissemination of ideas based on superiority over or hatred of other persons on the basis of race, colour, or national or ethnic origin, and the person's conduct may give rise to a risk of harm to the Australian community or a segment of the Australian community.

16. These amendments provide new and specific grounds that will expressly capture hate-motivated conduct and offences relating to the spread of hatred and extremism in the Criminal Code as the basis for the visa decision. The intention is that these new grounds will address the risks that a non-citizen may pose to the safety of the Australian community through conduct that promotes hatred and extremism, including in circumstances where community risk is evident, or a hate crime has been committed, but there is no criminal justice outcome.

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17. The amendments to the character test and to the grounds for refusal or cancellation of temporary safe haven visas, add to existing grounds that address the risk of a person engaging in certain conduct, including vilification, inciting discord, or activities that represent a danger to the Australian community, if they were allowed to enter or remain in Australia. Significantly, these amendments do not introduce any new powers under sections 500A or 501 of the Migration Act or expand the existing powers for the refusal or cancellation of a visa that are provided for under subsections 500A(1) or (2) or 501(1), (2), (3), and (3A), or 501A, 501B, or 501BA. The amendments also do not modify the existing framework for the application of the rules of natural justice under subsections 501(1) and (2) or the exclusion of the rules of natural justice under section 500A or subsections 501(3) and (3A) of the Migration Act. The intention is to broaden the circumstances in which a non-citizen may have their visa refused or cancelled on the basis that the Minister administering the Migration Act is satisfied (subsection 501(1)) or reasonably suspects (subsections 501(2) and (3)) or is of the opinion (section 500A) that they have engaged in conduct that relates to hate, vilification, or extremism.

18. Schedule 2 to the Bill also amends Schedule 5 to the Migration Regulations 1994 (the Migration Regulations) to extend the application of Special Return Criterion 5001 to any person refused a visa under sections 501, 501A, or 501B of the Migration Act, unless the refusal has been revoked or the Minister administering the Migration Act has subsequently personally granted a permanent visa to the person. This has the effect that a person refused a visa under sections 501, 501A, or 501B is permanently excluded from being granted a visa.

19. These amendments to the Migration Act and the Migration Regulations are intended to strengthen border controls to protect the Australian community from non-citizens who spread division, hatred, and extremism.

SCHEDULE 3 – Customs amendments

Part 1 – Prohibited material

20. Currently, the export and import controls available to prohibit the export or import of violent extremist material and prohibited symbols, and goods within which these materials or symbols are contained, are limited in their scope. Objectionable goods are currently defined under regulation 3 and regulation 4A of the Customs (Prohibited Exports) Regulations 1958 (Prohibited Exports Regulations) and the Customs (Prohibited Imports) Regulations 1956 (Prohibited Imports Regulations) respectively to cover a range of publications and goods including those that are considered to offend against the standards of morality, decency and propriety generally accepted by reasonable adults such as through their depiction of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena or by promoting the misuse of specific drugs. Objectionable goods also include publications or goods that promote, incite or instruct in matters of crime or violence or advocate the doing of a terrorist act. However, the definitions do not currently explicitly capture violent extremist material or prohibited symbols.

21. The proposed amendments would insert new subregulation 3(2AB) into the Prohibited Exports Regulations and new subregulation 4A(1AB) into the Prohibited Imports Regulations which amends the definition of objectionable goods to include goods that:

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- are violent extremist material (within the meaning of the Criminal Code); or
- are or depict prohibited symbols (within the meaning of the Criminal Code); or
- contain such goods.

22. These amendments would ensure that export and import prohibitions covering objectionable goods capture violent extremist material and prohibited symbols, and goods that contain extremist material and prohibited symbols. The violent extremist material and prohibited symbols that are subject to export or import control are physical things (for example a computer, flag, mobile phone or other electronic devices that hold these things) as defined under those terms in the Criminal Code.

23. Under these controls, the export and import of "objectionable goods" is currently prohibited unless permission to export or import those goods are given by the Minister administering Part 2 of the *Classification (Publications, Films and Computer Games) Act 1995* or the goods are being exported or imported by a police officer for the purposes of criminal investigation or law enforcement (including criminal prosecution).

24. Additional proposed amendments would introduce a new exemption under subregulations 3(4) and 4A(2) which will have the effect that the prohibition on the export or import of objectionable goods as defined in regulations 3 and 4A are not enlivened if the conduct of exporting or importing the objectionable good is for a purpose covered by subparagraph 80.2H(9)(a)(i) or 80.2H(9)(b)(ii), or paragraphs 80.2H(10)(a) to (e), of the Criminal Code. These include:

    - for a religious, academic, educational, artistic, literary or scientific purpose (subparagraph 80.2H(9)(a)(i) of the Criminal Code); or
    - for the purposes of making a news report, or a current affairs report, that is made by a person working in a professional journalistic capacity (subparagraph 80.2H(9)(b)(ii) of the Criminal Code); or
    - a range of purposes related to criminal justice and law enforcement such as for the purposes of proceedings in a court or tribunal, for monitoring compliance and for the investigation and enforcement of a law (paragraph 80.2H(10)(a) to (c) of the Criminal Code); or
    - for the performance of public duties or functions where the conduct is reasonable in the circumstances (paragraph 80.2H(10)(d) to (e) of the Criminal Code).

25. As a result of these amendments, Australian Border Force (ABF) officers would have the authority to seize these objectionable goods as a prohibited good and take appropriate enforcement action against the importer or exporter for breach of customs laws where an applicable exemption does not apply. These changes strengthen the ability of the ABF to prevent extremist material entering and leaving Australia, and reinforces Australia's commitment to combating violent extremism and hate-based ideologies.

26. Section 233 of the *Customs Act 1901* (Customs Act) also makes it an offence to export or import any prohibited goods punishable upon conviction with a penalty not exceeding 3 times the value of the goods or 1,000 penalty units, whichever is greater. An offence

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under this section is a strict liability offence and does not require a fault element for any of the physical elements of the offence. Section 233BAA of the Customs Act provides for a further special offence with increased penalties relating to the import or export of tier 1 goods. A person commits an offence under this section if they intentionally export or import a prohibited tier 1 good and are reckless as to that fact with a penalty of imprisonment for 5 years or 1,000 penalty unites, or both.

27. Schedule 7 to the Customs Regulation 2015 provides for a table of drugs and other goods classified as tier 1 goods. Proposed amendments to table item 22 would have the effect that a good that is an objectionable good but is not an item of child abuse material is prescribed as a tier 1 good. This change would remove the current reference to "commercial quantity of objectionable goods" and would operate to capture all goods that are objectionable goods, including, to the extent not covered by an exception, goods that are violent extremist material or prohibited symbols, and goods that contain violent extremist material or prohibited symbols, irrespective of their quantity.

28. These proposed changes would expand the range of penalties that can be imposed by a court where a person exports or imports an objectionable good without the requisite permission or having met an exemption. Advancements in technology and information storage have also rendered the commercial quantity condition obsolete, with modern storage devices capable of storing large volumes of objectionable material, however under existing legislation each individual device is considered one individual good. The existing strict liability offence under section 233 remains available where offending only meets the physical elements of the offence. A term of imprisonment up to 5 years for offences under section 233AB will be available where appropriate for the most serious offending.

Part 2 – Powers relating to instruments

29. Part 2 of Schedule 3 makes technical amendments to section 4A of the Customs Act to clarify neither of the following are legislative instruments:

    a) a form or statement approved as mentioned in section 4A;

    b) an instrument approving a form or statement as mentioned in section 4A.

30. This Part also makes technical amendments to sections 50 and 112 of the Customs Act to clarify that regulations made for the purposes of sections 50 and 112 may confer on the Minister administering the Customs Act the power to make provision in relation to a matter by legislative instrument.

SCHEDULE 4 – Firearms amendments

Part 1 – National gun buyback

31. Part 1 of Schedule 4 proposes new provisions to establish a national gun buyback scheme to governments to purchase surplus and newly restricted firearms. Consistent with the approach taken in the 1996 national gun buyback scheme, this scheme is facilitated through a coordinated national framework where the Commonwealth provides financial assistance to the States (which is defined to include the Australian Capital Territory and the Northern Territory) to support their respective implementation of the national gun

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buyback scheme by way of reimbursements. The proposed measures in support of the national buyback scheme will create a framework that is able to share the costs of the national gun buyback scheme with participating jurisdictions. The Australian Federal Police (AFP) will work in partnership with the states and territories to destroy surrendered firearms.

32. Under the mechanism in section 16 of the *Federal Financial Relations Act 2009* (the FFR Act), a Treasury Minister makes a determination under the FFR Act in relation to a State in respect of reimbursement of 'qualifying compensation' paid by the State. This measure provides that 'qualifying compensation' is compensation paid during the buyback period by a State under a compensation scheme set up by the State. It also provides that each State's compensation scheme is subject to the approval of the AFP Minister, ensuring consistency, transparency and fairness in implementation of the national gun buyback scheme.

33. Part 1 of Schedule 4 would establish a legislative framework for the national gun buyback scheme, supported by the FFR Act and *Federal Reform Fund Act 2008*, that recognises the split of responsibility between the Commonwealth and the States. Payments will be made in accordance with the terms and conditions set out in the Federation Funding Agreement schedules between the Commonwealth and the States. Payments made under these frameworks uphold accountability and ensure the integrity of public funds paid to States through the included safeguards. While other relevant financial assistance and payments can be made to States under the FFR Act, the framework also includes specific provisions allowing payments in connection to the national firearms program to be made to entities other than the States, outside the FFR Act. To maintain strict fiscal discipline and parliamentary oversight, this expenditure is subject to an overall limit established via a notifiable instrument, to be registered on the Federal Register of Legislation to ensure public transparency.

34. Part 1 of Schedule 4 also makes consequential amendments to the *Income Tax Assessment Act 1997* to amend the definition of ***firearms surrender arrangements*** to include the national firearms program. The amendments ensure that compensation payments a taxpayer receives under the national gun buyback scheme are not assessable for income tax purposes.

Part 2 – Firearms background checks

35. Part 2 of Schedule 4 would establish legislative heads of power in the *AusCheck Act 2007* (AusCheck Act) that would, in turn, enable the standing up of a Commonwealth background checking framework to support State and Territory Governments to identify and manage risks to security and the advancement of serious and organised crime, in connection with firearms licensing.

36. The resulting framework would be facilitated by AusCheck, the Commonwealth background checking authority, and would draw on intelligence held by the Australian Security Intelligence Organisation (ASIO) and the Australian Criminal Intelligence Commission (ACIC) concerning security and serious and organised crime, respectively. The framework would also enable AusCheck to facilitate a citizenship verification check in limited circumstances. Consistent with all other AusCheck background checking frameworks, the Part 2 of Schedule 4 would also provide a head of power for regulations to be made to prescribe a range of matters, such as the process, information requirements

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(including in relation to consent for checks) and types of advice given for these checks. In addition, the amendments contain proposed provisions for deemed consent in circumstances where a national or law enforcement agency requests a background check. These more detailed matters concerning the operation of the framework would be settled in consultation with the States and Territories.

37. The Commonwealth background checking framework would complement the existing ability for national security agencies, such as ASIO and the ACIC to share intelligence with State and Territory partners on matters relating to security and serious and organised crime. ASIO and the ACIC will continue to share classified intelligence with States and Territories for these purposes, including concerning firearms-related risks.

Amendments to the AusCheck Act relating to the facilitation of background checks for firearms related purposes

38. Part 2 of Schedule 4 would amend the AusCheck Act to enable regulations to be made to establish a new Commonwealth background checking scheme. It is proposed that AusCheck, the national background checking authority administered by the Department of Home Affairs would facilitate a firearms background check at the request of State and Territory firearms licencing authorities (FLAs) for individuals who are applying for, or renewing, their firearms license.

39. In line with this, it is proposed that a firearms background check may consist of one or more of the following: a criminal intelligence assessment by the ACIC under section 54C of the *Australian Crime Commission Act 2002* (ACC Act), a security assessment by the ASIO under section 37 of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), and, in limited cases, an Australian citizenship check conducted by AusCheck.

40. Part 2 of Schedule 4 contemplates that regulations would be required to operationalise this new scheme. Accordingly, the amendments contain a head of power that enables regulations to be made to cover the breadth of operational issues, such as the form of an application, the information required to be contained in an application for a firearms background check (including in relation to consent for the check), the manner of conducting a check, criteria against which applications are assessed, forms of advice to be given back to applicants, etc. This approach aligns with the current model of the AusCheck framework, and provides necessary adaptability for Commonwealth, State and Territory agencies to collaborate on how the exact scheme and associated processes would work.

41. Part 2 of Schedule 4 provides that background checks may be conducted in connection with:

    - a decision under a law of a State or Territory about whether to issue a firearms licence, or otherwise relating to the issue of such a licence (including in relation to conditions)—this would ensure that background checks can be conducted to inform initial licence issuing decisions

    - a decision about whether to renew, revoke, vary or suspend a licence—this would cover both 'point-in-time' checks connected with an application to renew

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a licence, as well as the provision of advice at any time to inform the potential revocation, variation or suspension of a licence

- in relation to an individual who holds a firearms licence, an application by a law enforcement agency or a national security agency—this would ensure that, in addition to the ability for a firearms background check to be undertaken at any time to inform the proactive consideration of whether to revoke, vary or suspend a licence as outlined above, a check may also be undertaken at the express request of such agencies, for example, where new information has arisen that raises questions about whether a person should continue to hold a licence.

42. Part 2 of Schedule 4 also proposes adjustments to the information handling and protection provisions in the AusCheck Act that would ensure that information collected by AusCheck, which does not relate to the individual who is subject of a firearms background check, would not be retained or made further use of by AusCheck, beyond passing it along to national security agencies, like ASIO and ACIC, to provide context and help inform an assessment of the individual's risk profile as it relates to national security or serious and organised crime. The proposed amendments to information handling and protection provisions in the AusCheck Act are necessary given that firearms background checks would likely require the collection of an array of personal information about an individual and their family or associates.

43. Finally, the Part 2 of Schedule 4 would also amend the AusCheck framework to deem consent in order for national security and law enforcement agencies to initiative proactive 'own motion' firearms background checks. The combination of the ability for AusCheck to facilitate 'point-in-time' checks at the firearms licence application and renewal stages, as well as proactive 'own motion' checks at the request of ASIO and the ACIC, as well other national security and law enforcement agencies, would provide a high degree of flexibility to manage firearms-related security and serious and organised crime risks. In particular, agencies would have the ability to trigger a reassessment of an existing firearms license holder if new information, intelligence or concerns arise outside of the formal application and renewal cycle, including in situations where, at the point in time where the amendments in this Part of this Schedule commence, someone already holds an active firearms licence under State or Territory firearms legislation. This measure supports State and Territory decision making and protects public safety.

Amendments to the criminal intelligence assessment framework under the ACC Act, including to enable ACIC to participate in the AusCheck firearms background check framework

44. Part 2 of Schedule 4 would amend the ACC Act to repeal Division 2A of Part II to the ACC Act and introduce a revised criminal intelligence assessment framework under a new Part III to the ACC Act. These amendments would deliver targeted changes to strengthen the operation of the ACIC's criminal intelligence assessment framework and expand the scope of the framework, including to provide criminal intelligence assessments to AusCheck for the purpose of firearms background checks. Expanding the scope of ACIC's criminal intelligence assessment function to inform States and Territories' firearms licencing decisions will play a critical role in preventing the use of firearms in connection with serious and organised crime.

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45. Division 1 of the new Part III of the ACC Act would outline the core definitions of the framework and make changes to key definitions which underpin the effectiveness of a criminal intelligence assessment. The definition of a ***criminal intelligence assessment*** would be amended to clarify the purpose of an assessment and make it simpler for ACIC to provide an assessment. The amended definition focuses on whether taking prescribed administrative action would assist to prevent the advancement of serious and organised crime, rather than whether the subject may commit a particular crime. This is complemented by the introduction of a new definition for ***serious and organised crime*** which would capture offences that may have been committed, may presently be being committed, or may be committed in the future. In recognition of the findings of the *Independent Review of the ACIC and associated Commonwealth law enforcement arrangements*, the inclusion of this temporal element aims to ensure the ACIC can be responsive to the threat of serious and organised crime, including by operating in an anticipatory or discovery phase of an investigation.

46. Division 2 of the new Part III of the ACC Act would continue to enable the ACIC to support the security of Australia's aviation and maritime sectors by making and giving criminal intelligence assessments for AusCheck background checks required or permitted by the *Aviation Transport Security Act 2004* (ATS Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFS Act) or regulations under those Acts. Importantly, the amendments would also expand the scope of the framework to enable the ACIC to conduct criminal intelligence assessments for a new AusCheck firearms background checking scheme. This would ensure that Commonwealth criminal intelligence holdings can be used to inform decision making on firearms licencing by FLAs.

47. Amendments in Part 2 Schedule 4 would also make changes to improve the flexibility and responsiveness of the ACIC's criminal intelligence assessment framework. It would introduce the ability for criminal intelligence assessments to be made and given for purposes related to background checks as prescribed in the Australian Crime Commission Regulations 2018. This recognises the pervasive nature of serious and organised crime and its infiltration across a growing variety of environments and sectors by enabling criminal intelligence assessments to be made for the purposes of background checks as appropriate.

48. Amendments in Part 2 Schedule 4 would also clarify that the ACIC can undertake criminal intelligence assessments on their own initiative at any time provided there is a connection to a current or previous background check of a person for purposes related to the ACIC's criminal intelligence assessment functions. This clarifies that the ACIC can undertake a criminal intelligence assessment where the ACIC becomes aware of information relating to a person, after an initial criminal intelligence assessment has been undertaken. The ability to conduct criminal intelligence assessments at ACIC's discretion will enable the ACIC to respond to new intelligence as appropriate, rather than solely at the point of an application or renewal application.

49. Part 2 Schedule 4 would also amend the ACC Act to provide that the requirement to notify a person of an adverse criminal intelligence assessment in respect of that person does not apply to assessments in relation to firearms licensing decisions, and that merits review in the Administrative Review Tribunal (ART) is not available in relation to such assessments. It is not intended that these amendments would displace the ACIC's

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obligation to afford procedural fairness to the subject of a potential adverse assessment, however, the extent of that obligation will continue to be dependent on the circumstances of a particular case. The Bill would also amend the ACC Act so that provisions to disapply notification and merits review would not apply in the circumstances prescribed by regulations. This would provide a mechanism for notification and merits review to be re-enlivened in particular circumstances. Consistent with existing requirements, notification requirements and the ability to apply for ART review of an adverse criminal intelligence assessment other than in the context of a firearms background check will remain.

50. These amendments would limit the potential disclosure of sensitive intelligence information in the firearms background check context and reflect the position set out in paragraph 1 of the National Firearms Agreement, that 'firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety', rather than an entitlement. All applicants would retain the right to seek judicial review of an adverse criminal intelligence assessment by ACIC and the AusCheck background check. Applicants would also retain the right to seek merits review of final firearms licence decisions at the state and territory level, subject to the laws of each jurisdiction.

51. Further amendments would clarify the use of automation for certain criminal intelligence assessments. Noting the high volume of criminal intelligence assessments made by the ACIC each year, it is necessary for the ACIC to make and give certain criminal intelligence assessments by way of automated decision making (i.e. a computer) in certain circumstances. This is in circumstances where no results are returned against a search for the applicant across certain ACIC intelligence holdings. Automated decision making is only used in isolation where it is beneficial to the applicant, for example, where the result is confirming that it is appropriate for the applicant to access certain secure environments from a criminal intelligence assessment perspective.

Amendments to the ASIO Act to support ASIO to participate in the AusCheck firearms background check framework

52. Under existing Part IV of the ASIO Act, ASIO can furnish security assessments in relation to, relevantly, the exercise of any power, or the performance of any function, in relation to certain decisions under a law of a State or Territory relating to firearms licensing. This assessment may include recommendations, opinions, or advice on whether issuing or revoking a license is consistent with security requirements, or whether security considerations make such action necessary or desirable. Amendments in Part 2 of Schedule 4 would clarify that ASIO may provide a security assessment in relation to decisions about whether to renew, revoke, vary or suspend a firearms licence, in addition to decisions about issuing or revoking such licences.

53. Part 2 of Schedule 4 would amend the ASIO Act to provide that the requirement to notify a person of an adverse or qualified security assessment in respect of that person, does not apply to assessments in relation to firearms licensing decisions, and that merits review in the ART is not available for such assessments. It is not intended that these amendments would displace ASIO's obligation to afford procedural fairness to the subject of a potential adverse or qualified security assessment, however, the extent of that obligation will continue to be dependent on the circumstances of a particular case. The Bill would also amend the ASIO Act so that provisions to disapply notification and merits review

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would not apply in the circumstances prescribed by regulations. This would provide a mechanism for notification and merits review to be re-enlivened in specified circumstances.

54. Part 2 of Schedule 4 would also amend the ASIO Act to enable specified assessment action to be automated through use of a computer program. This would allow ASIO to use automated decision-making in circumstances specified in an instrument made by the Minister.

55. As with the corresponding amendments to the ACC Act, the amendments to Part IV of the ASIO Act would limit the potential disclosure of sensitive intelligence information and reflects the fact that holding a firearms license is a privilege rather than an entitlement. All applicants would retain the right to seek judicial review of an adverse or qualified security assessment by ASIO and an AusCheck background check. Applicants would also retain the right to seek merits review of final firearms licence decisions at the State and Territory level, subject to the laws of each jurisdiction.

Amendments to the Crimes Act to enable spent, pardoned and quashed conviction information to be used by ASIO, the ACIC and intelligence or security agencies for specified purposes

56. Divisions 2 and 3 of Part VIIC of the *Crimes Act 1914* (Crimes Act) regulate the disclosure, filing, recording and use of information concerning pardoned, quashed and spent convictions for Commonwealth and Territory offences.

57. Part 2 of Schedule 4 would amend the Crimes Act to provide that Division 2 (pardons and quashed convictions) does not apply in relation to:

- the disclosure of information to or by ASIO
- the filing or recording of information that comes into the possession of ASIO, or
- the use by ASIO of information,

for the purposes of the performance of ASIO's functions.

58. Part 2 of Schedule 4 would also amend the Crimes Act to provide that Divisions 2 (pardons and quashed convictions) and 3 (spent convictions) of Part VIIC do not apply in relation to:

- the disclosure of information to or by the ACIC
- the filing or recording of information that comes into the possession of the ACIC, or
- the use by the ACIC of information,

for the purposes of the ACIC's criminal intelligence assessment function.

59. Part 2 of Schedule 4 would further amend the Crimes Act to provide that:

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- ASIO may use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, or information relating to a person having been charged with and found guilty of an offence but discharged without conviction, in the performance of its functions or the exercise of its powers

- the ACIC may use or disclose such information in the performance of the ACIC's criminal intelligence assessment function, and

- an intelligence or security agency may use or disclose such information for the purpose of assessing prospective employees or members of the agency, or persons proposed to be engaged as consultants to, or perform services for, the agency or a member of the agency.

60. These amendments would expressly permit the use and disclosure of spent, pardoned and quashed conviction information by these agencies for these specified purposes, despite any restrictions in State or Territory legislation that would otherwise apply. The amendments expressly give rise to an inconsistency between the Commonwealth law and State and Territory laws, such that the Commonwealth law would prevail to the extent of the inconsistency. The amendments would enable ASIO, the ACIC and intelligence and security agencies to use and disclose information that it has obtained for the specific purposes outlined in the Bill. By limiting these authorisations to use and disclosure by these agencies for specified purposes, the protections of Part VIIC would otherwise be maintained.

61. The ability to use, record and disclose pardoned, quashed and spent conviction information is important for intelligence and personnel security purposes. Depending on the reasons for the pardoning or quashing of a conviction, information about that conviction may remain relevant from a security or criminal intelligence, or personnel security perspective. For example:

    - in a circumstance where a conviction for terrorism or serious and organised crime was quashed because of a legal or procedural error, rather than fresh evidence indicating innocence, the nature of the person's conduct may remain relevant for intelligence purposes, including for the purpose of considering whether the person should be granted or hold a firearms licence, or

    - in a circumstance where a person was convicted for serious fraud, and that conviction is now spent, the fact of that spent conviction may remain relevant when considering whether that person should be employed in or engaged by an intelligence or security agency, where the highest levels of trust in staff is required.

Consequential amendments in other Acts to support the operation of new Part III of the ACC Act and the AusCheck firearms background check framework

62. Division 3, Part 2 of Schedule 4 would make consequential amendments to the following Commonwealth Acts to support the operation of new Part III of the ACC Act and the AusCheck firearms background check framework:

    - *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act);

    - *Administrative Review Tribunal Act 2024* (ART Act);

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- AusCheck Act;
- *AusCheck Regulations 2017* (AusCheck Regulations)*;*
- *Australian Border Force Act 2015* (ABF Act);
- ATS Act;
- *Aviation Transport Security Regulations 2005* (ATS Regulations);
- Crimes Act;
- MTOFS Act;
- MTOFS Regulations;
- *Surveillance Devices Act 2004* (SD Act); and
- *Telecommunications (Interception and Access) Act 1979* (TIA Act).

63. Amendments to the ADJR Act, ART Act, AusCheck Act, AusCheck Regulations*,* ATS Act, ATS Regulations, MTOFS Act, and the MTOFS Regulations would ensure that definitions and references in these Acts to a criminal intelligence assessment conducted by the ACIC under current Part II Division 2A of the ACC Act are replaced with the relevant definitions and references in new Part III. This would enable the operationalisation of the new criminal intelligence assessment function by ensuring that the relevant Commonwealth frameworks are appropriately aligned.

64. Further amendments to the AusCheck Regulations would clarify that the specified regulations apply:

    - in relation to an application for a background check made on or after the commencement of regulation 45; and
    - an application for a background check made before the commencement of regulation 45 that had not been completed before that commencement.

65. In relation to a background check commenced but not completed before the commencement of regulation 45, amendments ensure that the specified regulations apply as if a reference to an adverse criminal intelligence assessment included a reference to a high-risk criminal intelligence assessment. This threshold will subsequently be removed by the consequential amendments in this Bill, in order to align with the broader changes relating to the criminal intelligence assessment provisions in the ACC Act.

66. Further amendments to the ATS Regulations and the MTOFS Regulations would clarify the application of the specified regulations in relation to:

    - an application for a background check, an issue of an Aviation Security Identification Card (ASIC) or Maritime Security Identification Card (MSIC), suspension of an ASIC or MSIC, issue of a disqualifying notice of a MSIC apply on or after the commencement of Part 2 of Schedule 4 to the Bill.

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- the cancellation of an ASIC, visitor identification card (VIC), temporary aircrew card (TAC) or MSIC on or after the commencement of that Part, whether the ASIC, VIC, TAC or MSIC was issued before, on or after that commencement Part 2 of Schedule 4 to the Bill.

67. Amendments to the ABF Act, Crimes Act, SD Act, and TIA Act would enable the ACIC to consider and use more information when making a criminal intelligence assessment. This includes:

    - information obtained by the ABF using their own powers under the *Customs Act 1901*
    - information gathered from materials seized under a search warrant
    - information lawfully obtained from the use of a surveillance device or access to data under a computer access warrant
    - lawfully intercepted information
    - lawfully accessed information, and
    - telecommunications data.

68. Amendments to Chapter 4 of the TIA Act would enable the ACIC to authorise the disclosure of telecommunications data for the performance of the ACIC's criminal intelligence assessment function. This would enable the ACIC to obtain information to assist to identify persons, and to determine whether persons have been in contact with one another, to resolve foundational intelligence questions when conducting a criminal intelligence assessment.

69. Amendments to the SD Act and the TIA Act would enable Commonwealth, State and Territory agencies to disclose sensitive information and documents, which may include personal information, to the ACIC for the purpose of making a criminal intelligence assessment. Amendments to the SD Act and the TIA Act would also enable the ACIC and ASIO to disclose information for the purposes of merits and judicial review, if required as part of a proceeding relating to a criminal intelligence assessment or security assessment. Further amendments to the TIA Act would enable an authorised officer of the ACIC to authorise disclosure of telecommunications data for the purpose of making a criminal intelligence assessment.

<u>Part 3 – Transmission of firearms information and other information to ACIC</u>

70. A new information sharing and disclosure framework to facilitate the automatic disclosure of firearms information and other prescribed information, collected by the Department of Home Affairs, including the ABF, to the ACIC which administers the National Firearms Register (NFR) and the National Criminal Intelligence System , would be established under proposed amendments that will repeal and replace section 273L of the Customs Act.

71. Subsections 273L(1) and (3) would confer powers to the Home Affairs Secretary and the Comptroller-General of Customs respectively to disclose firearms information (or other

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information prescribed by the regulations) that is contained in one or more electronic systems under the control of the Home Affairs Secretary or the Comptroller-General of Customs, to the ACIC CEO. Subsections 273(2) and (4) would permit disclosure to be arranged in the form of an automatic transmission of disclosable information to one or more electronic systems under the control of the ACIC CEO. Section 273L would constitute an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 under Schedule 1 to the *Privacy Act 1988.*

72. "Firearms information" subject to disclosure would be defined under subsection 273(5) as information relating to firearms or other goods relating to firearms (including firearms frames, firearms receivers and firearms sound suppressors), and that such information may include the following:

    - information relating to the import or export of the firearms or other goods;
    - information relating to licences or permits (however described) for the firearms or other goods;
    - personal information or other information in relation to one or more persons.

73. Additional information that may be prescribed by the regulations to be able to be disclosed under section 273L must be information relating to goods that are not firearms or other goods relating to firearms, and may include:

    - information relating to the import or export of the goods;
    - information relating to licences or permits (however described) for the goods;
    - personal information or other information in relation to one or more persons.

74. Currently section 273L of the Customs Act governs the entry and transmission of information by computer and provides that, where this is required or permitted under the Act, it may be in an encoded form chosen by the Comptroller-General of Customs. These provisions would be carried into the new section 273M of the Act with changes that would assign different responsibilities for determining the encoded form (where required) to the Comptroller-General of Customs and the Home Affairs Secretary. The Home Affairs Secretary or the Comptroller-General of Customs would be responsible for determining the encoded form of information in relation to firearms information (or other information prescribed by the regulations) subject to automatic transmission to one or more electronic systems under the control of the ACIC CEO.

75. New section 273M would substantially replicate current section 273L but would expands it to cover information that would be disclosed by the Home Affairs Secretary or the Comptroller-General of Customs.

<u>Part 4 – Public safety tests for firearms and weapons</u>

76. The importation of firearms and certain weapons into Australia is primarily governed under Schedules 6 and 13 to the Prohibited Imports Regulations. Part 2 of each respective schedule categorises those firearms and weapons to which the Prohibited Imports Regulations apply. Importation of a firearm or weapon of a kind mentioned in Schedule 6

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or 13 is prohibited under the Prohibited Imports Regulation unless, amongst other requirements, the importation is in accordance with the requirements set out for the category of firearm or weapon in the schedule.

77. The proposed amendments would insert new regulations 4FA and 4HA into the Prohibited Imports Regulations to establish a public safety test for firearms and weapons. These tests would be applicable by discretion of the Minister administering the Prohibited Imports Regulations to assess the importation of goods to which regulations 4F and 4H apply (firearms and certain weapons) and concern whether the importation of the firearm or weapon poses a risk to the health, safety or security of the public or a segment of the public, which includes emergency services personnel. The Minister administering the Prohibited Imports Regulations would be required to make rules, by legislative instrument, for and in relation to whether the importation of a firearm or a weapon poses a risk to the health, safety or security of the public or a segment of the public. That Minister may also, at any time, require the person importing the good to give to the Minister any information that the Minister reasonably requires for the purpose of assessing the importation of the good against the public safety tests.

78. The intent of these amendments is to provide the Minister administering the Prohibited Imports Regulations with the authority to further consider whether an importation poses a significant risk to the health, safety or security of the public or a segment of the public. This would ensure that, while certain firearms and weapons may be legal to possess and use domestically, where they may not be suitable for the intended use within the community there is an ability to refuse import permission.

Part 5 – Importation of firearms

79. The importation of firearms into Australia is primarily governed under the Prohibited Imports Regulations. Schedule 6 to the Prohibited Imports Regulations classifies all prohibited firearms and related articles into different categories listed as items under Part 2 of Schedule 6. Importation of a firearm, and related articles, of the kind mentioned in Schedule 6 is prohibited under the Prohibited Imports Regulation unless, amongst other requirements, the importation is in accordance with the requirements set out for that item in the Schedule.

80. The proposed amendments to Schedule 6 requirements would tighten import controls on the following firearms and related articles where elevated risks have been identified:

- Assisted repeating action and straight pull repeating action firearms
- Firearms which are operated using belt-fed ammunition
- Magazines with a capacity of more than 30 rounds
- Frames and receivers
- Skirmish markers
- Sound suppressors and
- Speed loaders.

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81. The proposed amendments to the Prohibited Imports Regulations would introduce definitions for assisted repeating action and straight pull repeating action firearms and would impose import requirements for these firearms in line with existing requirements for the importation of semi-automatic firearms. Import permission requirements would be introduced for firearms that can be operated using belt-fed ammunition in line with existing requirements for the importation of firearms that have a fully automatic firing capability. Importation of magazines with a capacity of more than 30 rounds for any firearm would be restricted and importation could only occur where the importation complies with one of the prescribed tests. A further restriction will apply to speed loaders designed to reload a firearm or firearm magazine with ease and speed.

82. New identification and serial number requirements would also be applied to frames and receivers, in line with the existing requirements for complete firearms. Serialisation and identification would also be a requirement for the importation of sound suppressors. To meet the identification requirements for frames, receivers and sound suppressors, these goods would be subject to visual inspection upon importation – as per current requirements for firearms.

83. The proposed amendments to the Prohibited Imports Regulations would introduce a new definition for ***skirmish markers*** which encompass goods commonly known as airsoft handguns, airsoft rifles, airsoft shotguns, blasters, gel blasters or gel ball blasters. New item 14B of Schedule 6 would impose the police certification test for importation of skirmish markers that are not substantially the same in appearance as a fully automatic firearm or to which a firearm accessory is attached or integral. Additional measures will impose serial number, identification and safety testing requirements, as per all other firearms imported into Australia.

84. The official purposes test, when complied with, grants import permission for a range of articles in Schedule 6. Proposed amendments to the specified person test would introduce an additional requirement that the importer has produced evidence that they are an Australian citizen. The purpose of this amendment is to ensure national consistency following commitments by State and Territory governments to limit firearms licences to Australian citizens. Allowing for the importation of firearms by non-citizens poses a risk to community safety, as those individuals will not be able to be holders of firearms licences.

85. The "dealer test-category H article" test in Part 1 of Schedule 6 of the Prohibited Imports Regulations would be replaced with a new "handgun test". This test remains applicable to all articles in Part 3 that required the dealer test-category H test. The new handgun test would allow the Minister administering the Prohibited Imports Regulations to give permission for the importation of an H category article only if they are satisfied the importer meets certain requirements and that the importation complies with that test. The purpose of this amendment is to ensure national consistency for the importation of handguns and removes the certification requirements from State and Territory policing.

<u>Part 6 – Approved forms for police certification for firearms imports</u>

86. The amendments contained in Part 6 of Schedule 4 would amend the police certification tests to remove the use of open-ended permits for the importation of firearms and weapons under the Prohibited Imports Regulations. The importation of firearms and weapons could still be obtained through the use of an individual permit for each import.

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87. Firearms that can be imported on compliance with the police certification test require the importer to be given a statement, in an approved form, by a relevant police representative to the effect that the importer holds a licence or authorisation according to the law of the relevant State or Territory to possess the article (or that a licence or authorisation is not required). This is currently facilitated through approved forms which provide ongoing import permission for firearms for a given period of time. The proposed amendments to the police certification test would invalidate open ended approved forms on or after the commencement of the Bill. Importers relying on these forms would no longer have import permission. New approved forms detailing specific firearms and related goods (parts, ammunition, etc) for import would need to be obtained for the purposes of complying with the police certification test in Schedule 6.

88. The proposed amendments to the Schedule 6 police certification test would be replicated in the police certification test for weapons in Schedule 13 to the Prohibited Imports Regulations. It would render a statement made in approved form for the open-ended import of some weapons would have no effect in relation to the importation of a good on or after the day the Bill commences.

Part 7 – Offences relating to use of carriage service for firearms and explosives manufacture material

89. Part 7 of Schedule 4 would amend the Criminal Code and Crimes Act to create new offences for using a carriage service to access, provide access, possess, or control, material that instructs, supports, or facilitates the manufacture or modification of a firearm, firearm accessory, firearm part, firearm magazine, ammunition, or an explosive or other lethal device.

Part 8 – Ammunition Equipment

90. The importation of firearms into Australia is primarily governed under the Prohibited Imports Regulations. Schedule 6 of the Prohibited Imports Regulations classify all prohibited firearms and related articles into different categories listed as items under Part 2 of Schedule 6. Importation of a firearm, and related articles, of the kind mentioned in Schedule 6 is prohibited under the Prohibited Imports Regulation unless, amongst other requirements, the importation is in accordance with the requirements set out for that item in the Schedule.

91. Amendments to the Prohibited Imports Regulations will introduce a definition of ***ammunition equipment***, being an item that is designed to be worn on any part of the body for the specific purpose of allowing the wearer to readily access ammunition to increase the speed of reloading, and which can hold more than 30 rounds of ammunition. Ammunition equipment does not extend to items that can carry ammunition but were not designed for that purpose.

92. Amendments will impose import requirements for ammunition equipment, and importation can only occur where they comply with one of the prescribed tests.

SCHEDULE 5 – Transitional rules

93. Schedule 5 would allow the Minister administering the *Australian Federal Police Act 1979* or the Minister administering the *Administrative Review Tribunal Act 2024* to

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make rules prescribing transitional matters relating to the amendments or repeals made by the Bill.

Human rights implications

94. The Bill would engage the following human rights under the International Convention on Civil and Political Rights (ICCPR):

- right to life and security of the person in Articles 6 and 9
- non-refoulement obligations arising in respect of Articles 6 and 7
- right to freedom from arbitrary detention in Article 9
- right to freedom of movement in Article 12
- right to enter one's own country in Article 12
- right to due procedure for expulsion of aliens in Article 13
- right to a fair and public hearing and right to the presumption of innocence in Article 14
- right to legality in Article 15
- right to protection against arbitrary and unlawful interferences with privacy in Article 17
- rights relating to families and children in Articles 17 and 23
- right to freedom of thought, conscience and religion in Article 18
- right to freedom of opinion and expression in Article 19
- right to protection from exploitation, violence and abuse in Article 20
- right to peaceful assembly in Article 21
- right to freedom of association with others in Article 22
- right to be equal before the law and without discrimination to the equal protection of the law in Articles 2 and 26

95. The Bill would engage the following human rights under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR):

- right to work in Article 6
- right to education in Article 13
- right to take part in cultural life in Article 15

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96. The Bill would engage the following human rights under the *Convention on the Rights of the Child* (CRC):

- commitment to treat the best interests of the child as a primary consideration in Article 3

- commitment to treat applications by a child or their parents to enter or leave a State for the purposes of family reunification in a positive, humane and expeditious manner in Article 10

- commitment to promote the establishment of measures for dealing with children without resorting to judicial proceedings in Article 40(3)(b).

97. The Bill would engage the following human rights under the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT):

- *non-refoulement* obligations in Article 3

98. The Bill would engage the following human rights under the Convention on the Elimination of All Forms of Racial Discrimination (CERD):

- right to equality and non-discrimination in Article 4

SCHEDULE 1 – Amendments of legislation relating to the criminal law

Right to life and security of the person in Articles 6 and 9 of the ICCPR

99. The right to life in Article 6 of the ICCPR requires that government take appropriate steps to protect the right to life of those within its jurisdiction. This means that governments should take preventative measures to protect individuals from unwarranted actions by private persons, such as acts of violence.

100. The right to security of the person in Article 9 of the ICCPR places a positive obligation on states to provide reasonable and appropriate measures to protect a person's physical security. This includes where a government knows, or ought to know of, the existence of a real or imminent risk to the physical security of an identified individual or group of individuals from the criminal acts of another party.

<u>Introducing aggravated offences for preachers and leaders who advocate or threaten force or violence and adults who seek to radicalise children</u>

101. Articles 6 and 9 of the ICCPR would be positively engaged by the amendments in this Bill that would introduce aggravated offences for preachers and leaders who advocate or threaten force or violence and adults who seek to radicalise children.

102. Religious or spiritual leaders occupy a position of significant trust and authority in the community. This influence can be exploited where these leaders espouse violent extremist and hateful rhetoric, increasing the likelihood that the people they lead are similarly radicalised and for conduct to be engaged in that endangers the lives and physical safety of protected groups and members of protected groups. Aggravating the offences relating to advocating or threatening force or violence against protected groups, members of

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groups and their property (sections 80.2A-80.2BE) in these circumstances acknowledges that the exploitation of a leadership position to promote extremism warrants tougher penalties, and would enhance the protections provided by these offences for the physical security of groups and their members distinguished by a protected attribute.

103. Over time, there has been a significant increase in the number of children being radicalised, as well as planning and engaging in terrorism. Young people are particularly vulnerable to radicalisation and recruitment by violent extremist and terrorist groups, including mobilisation to violence. Aggravating the offences relating to advocating force or violence, advocating terrorism, and using a carriage service for violent extremist material, where an adults' conduct is directed towards a child, would further deter and punish conduct that could threaten the life and safety of members of the Australian community by radicalising children to violence and terrorism.

104. The new aggravated offences would protect the right to life and the right to security by making it clear that conduct that endangers the lives and physical safety of protected groups or members of protected groups is unacceptable in Australia. Having regard to the above, the new aggravated offences would advance the rights protected by Articles 6 and 9 of the ICCPR.

Increasing penalties for advocating or threatening force or violence

105. Articles 6 and 9 of the ICCPR would be positively engaged by the amendments in this Bill that would increase the maximum penalties for offences of advocating or threatening force or violence against protected groups, members of protected groups and their property in sections 80.2A-80.2BE of the Criminal Code.

106. Advocating or threatening to use force or violence against a group, or members of a group, distinguished by a protected attribute, is conduct that may increase the risk of violence and may cause community members to fear for their life or physical security. By increasing the penalties for this conduct, the amendments would send a clear message that groups, or members of a group, distinguished by a protected attribute have a right to physical security and to live their lives in safety by ensuring that those who advocate or threaten to use force or violence against them face serious criminal consequences.

Introducing an aggravated sentencing factor for conduct motivated by racial hatred

107. Article 6 and 9 of the ICCPR would be positively engaged by the amendments in this Bill that would introduce a new aggravated sentencing factor for conduct that is motivated by hate towards a group, or members of a group, distinguished by race or national or ethnic origin.

108. Offences that are motivated or perpetrated by racial hate or discrimination can cause profound harm, beyond that which is generally experienced by the offending conduct itself. It is an attack on the dignity of a targeted group, and members of that group, which affects the physical and psychological wellbeing of not only those who were targeted, but of their whole community.

109. The amendments recognises that conduct motivated by racial hatred would likely cause community members to fear for their life or physical security and would send a clear message that persons and groups distinguished by race or national or ethnic origin have a

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right to physical security, and to live their lives in safety. The new aggravated sentencing factor would ensure that a court recognises the full harms caused by this conduct, not only inflicted on the victim, but on other members of the group to which the victim belongs.

Introducing a new listing framework for prohibited hate groups

110. Articles 6 and 9 of the ICCPR would be positively engaged by the amendments in this Bill that would introduce a new framework for listing organisations as a prohibited hate group that have directly engaged in, prepared or planned to engage in, or assisted the engagement in, conduct constituting a hate crime targeted at a person or persons distinguished by race or national or ethnic origin, or advocated engaging in conduct constituting such a hate crime.

111. The new listing framework, and associated offences, which would criminalise certain dealings with prohibited hate groups, is designed to respond to and prevent the spread of violent extremist and hateful beliefs that normalise racial hatred and radicalise people to violence. These organisations often target persons, and groups of persons, distinguished by race or national or ethnic origin, for the purposes of engaging in or inciting discrimination, hatred or violence, or disseminating ideas based on racial superiority.

112. The new listing framework, and associated offences, would positively engage these rights as they would protect Australians from such organisations, listed as prohibited hate groups, whose amplification of racial hate threatens the lives and safety of the Australian community.

Introducing a new offence for serious racial vilification or advocating racial supremacy

113. Article 6 and 9 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new offence for intentionally inciting hatred towards another person or group of persons, or disseminating ideas of superiority over or hatred of another person or group of persons, on the grounds of race, colour or national or ethnic origin.

114. Hateful views and rhetoric are used as a tool by violent extremists to dehumanise persons and groups on the basis of their race, colour or national or ethnic origin and communicate to these groups that they are inferior. The public expression of these views promotes hatred, fosters radicalisation and threatens the social fabric of the Australian community.

115. The new offence would target dehumanising and hateful views and rhetoric that may cause members of the community to fear for their life or physical security on the basis of their race, colour or national or ethnic origin. By criminalising this hate speech, the new offence would also provide an avenue for law enforcement to intervene early to prevent vilification from escalating to violence.

116. The new offence would reinforce that all members of the community, including people and groups distinguished by race, colour or national or ethnic origin, have a right to live their lives in safety and free from intimidation and harassment, by ensuring that those who incite racial hatred or disseminate ideas of racial superiority face appropriate criminal consequences.

Strengthening the existing prohibited symbols offences

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117. Articles 6 and 9 of the ICCPR would be positively engaged by the amendments in this Bill that would strengthen the public display of, and trading in, prohibited symbols offences in sections 80.2H, 80.2HA, 80.2J and 80.2JA of the Criminal Code, and associated powers to ensure greater operational effectiveness and that the offences are operating as intended. The prohibited symbols offences are intended to criminalise conduct that have been used to recruit and radicalise individuals into violent extremism.

118. The amendments would positively engage the right to physical security, and to live in safety, by strengthening prohibited symbols offences that target symbols that represent and convey ideologies of hatred, violence and racism which are incompatible with Australia's multicultural and democratic society. Violent extremists, terrorist organisations and hate motivated groups may use symbols to signal their ideology to a wide-ranging audience, to recruit and inspire behaviours from like-minded individuals and to establish group belonging.

Right to freedom from arbitrary detention in Article 9 of the ICCPR

119. The right to liberty in Article 9 of the ICCPR requires that persons not be subject to arrest and detention except as provided for by law and provides that neither the arrest nor the detention is arbitrary. The right applies to all forms of detention where a person is deprived of their liberty.

<u>Introducing aggravated offences for preachers and leaders who advocate or threaten force or violence and adults who seek to radicalise children</u>

120. Article 9 of the ICCPR would be engaged by the amendments in this Bill that would introduce aggravated offences for preachers and leaders who advocate or threaten force or violence and adults who seek to radicalise children, in relation to the penalties of imprisonment for the new aggravated offences proposed.

121. These increased penalties for the underlying offences are appropriate to deter and punish the relevant conduct, with the additional penalties reflecting the seriousness of harm stemming from the aggravating circumstances. These aggravated penalties are in alignment with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide). The Guide provides that higher penalties are appropriate where the consequences of an offence are particularly dangerous or damaging.

122. Religious or spiritual leaders occupy a position of significant trust and authority in the community. This influence can be exploited where these leaders espouse violent extremist rhetoric, increasing the likelihood that the people they lead are similarly radicalised, endangering the lives and physical safety of protected groups and members of protected groups and potentially the safety of the community as a whole. Aggravating the offences relating to advocating or threatening force or violence against protected groups, members of groups and their property (sections 80.2A-80.2BE) acknowledges that the exploitation of religious or spiritual leadership positions to promote hate-motivated violence and extremism warrants tougher penalties.

123. Over time, there has been a significant increase in the number of children being radicalised, as well as planning and engaging in terrorism. Regardless of their beliefs, young people are particularly vulnerable to radicalisation and recruitment by violent

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extremist and terrorist groups, including mobilisation to violence. Aggravating the offences relating to advocating force or violence, advocating terrorism, and using a carriage service for violent extremist material, where an adults' conduct is directed towards a child, would further deter and punish conduct that could threaten the safety of the Australian community by radicalising children to violence and terrorism.

124. The amendments would engage the right to freedom from arbitrary detention in so far as the new aggravated offences would increase the maximum penalty that may be imposed. However, the new offences do not represent an infringement on the right to liberty and freedom from arbitrary arrest and detention.

125. Limitations on the right to liberty are permissible if they are in accordance with procedure established by law, and if the limitation is reasonable, necessary and proportionate. While it may have the effect putting an offender in custody, the grounds for this are prescribed by law, and only take effect following valid and lawful arrest and/or conviction for the criminal offence.

126. The amendments are proportionate as they are tailored to the seriousness of the aggravated offences and the additional harm caused by the relevant conduct.

Increasing penalties for advocating or threatening force or violence

127. Article 9 of the ICCPR would be engaged by the amendments in this Bill that would increase the maximum penalties for offences for advocating or threatening force or violence against protected groups, members of groups and their property in sections 80.2A-80.2BE of the Criminal Code, as the amendments may have the effect of increasing the time in which an offender is in custody. However, this engagement of the right to liberty is necessary and proportionate, as the increased penalties will only be applied by a court if a person is convicted of an offence as a result of a fair trial in accordance with the procedures established by law.

Increasing penalties for use of a postal or related service to menace, harass or offend

128. Article 9 of the ICCPR would be engaged by the amendments in this Bill that would increase the maximum penalty for the offence of use of a postal or related service to menace, harass or offend under section 471.12 of the Criminal Code, as the amendments may have the effect of increasing the time in which an offender is in custody. However, this engagement of the right to liberty is necessary and proportionate, as the increased penalties will only be applied by a court if a person is convicted of an offence as a result of a fair trial in accordance with the procedures established by law.

Introducing an aggravated sentencing factor for conduct motivated by racial hatred

129. Article 9 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new aggravated sentencing factor for conduct that is motivated by hate towards another person, or group of persons, distinguished by race or national or ethnic origin, as the amendments may have the effect of increasing the time in which an offender is in custody. However, this engagement of the right to liberty is necessary and proportionate, as the increased penalties will only be applied by a court if a person is convicted of an offence as a result of a fair trial in accordance with the procedures established by law.

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130. Furthermore, the amendments are proportionate as they are tailored to the seriousness of various offences, ensuring that the court recognise the full harms caused by the offending conduct not only inflicted on the individual victim, but to other members of the protected group and the broader Australian community.

Introducing a new listing framework for prohibited hate groups

131. Article 9 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new listing framework for prohibited hate groups, in relation to the penalties of imprisonment for the new offences proposed under new Division 114B.

132. The penalties for the new offences under the framework are adequate and appropriate to deter and punish damaging behaviour, with penalties set in respect of the seriousness of harm stemming from each offence. These penalties align with existing Commonwealth offences for threatening force or violence against targeted persons or groups and are in alignment with the Guide. The Guide provides that heavier penalties are appropriate where the consequences of an offence are particularly dangerous or damaging. Conduct engaged in by prohibited hate groups and members of prohibited hate groups spreads racial hatred and normalises violent, racist and extremist rhetoric detrimental to social cohesion and putting the safety of the community at risk. The ability of these hate groups to operate and expand presents an unacceptable threat to the Australian community.

133. The penalties for the new offences are not arbitrary—they would only be applied by a court if the prosecution has proven the elements of the offence beyond a reasonable doubt, which are reasonable, necessary and proportionate to the offending. The availability of exemptions and defences, in additions to those available under Part 2.3 of the Criminal Code, appropriately limits the conduct captured by the offences. This includes for legitimate engagement with prohibited hate groups to perform an official duty or function for the Commonwealth.

134. The new offences would not apply retrospectively and would only be available in relation to organisations that have been listed as a prohibited hate group. Although, the AFP Minister, in recommending the listing of an organisation, is able to consider, and be satisfied of conduct constituting a hate crime that occurred prior to the commencement of the provision, any criminality attached to the conduct would not be retrospective. This ensures that any sentence of imprisonment imposed by the new offences would not represent an infringement on the right to freedom from arbitrary detention.

135. On this basis, the new offences and proposed penalties are reasonable, necessary and proportionate measures to respond to the threat posed by prohibited hate groups to the safety and security of persons or groups distinguished by a certain attribute.

Introducing a new offence for serious racial vilification or advocating racial supremacy

136. Article 9 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new offence for intentionally inciting hatred towards another person or group of persons, or disseminating ideas of superiority over or hatred of another person or group of persons because of their race, colour or national or ethnic origin.

137. The amendments would engage the right to freedom from arbitrary detention in so far as the new offence would impose a penalty of imprisonment. However, the new offences do

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not represent an infringement on the right to liberty and freedom from arbitrary arrest and detention.

138. Limitations on the right to liberty are permissible if they are in accordance with procedure established by law, and if the limitation is reasonable, necessary and proportionate. While it may have the effect putting an offender in custody, the grounds for this are prescribed by law, and only take effect following valid and lawful arrest and/or conviction for the criminal offence.

139. Hateful views and rhetoric are used as a tool by violent extremists to dehumanise persons and groups on the basis of their race, colour or national or ethnic origin and communicate to these groups that they are inferior. The public expression of these views promotes hatred, fosters radicalisation and threatens the social fabric of the Australian community.

140. The maximum penalty for the new offence is proportionate as it is tailored to the seriousness of the conduct, ensuring that those that incite hatred, or disseminate ideas of superiority, on the grounds of race, colour, or national or ethnic origin, face appropriate criminal consequences.

Strengthening the existing prohibited symbols offences

141. Article 9 of the ICCPR may be engaged by the amendments in this Bill that would strengthen the offences in 80.2H and 80.2HA for public display of, and trading in, prohibited symbols by repealing the public interest elements of the public display of the offences and instead provide them as offence-specific defences.

142. The amendments would place an evidential burden on the alleged offender, but do not represent an infringement on the right to freedom from arbitrary arrest and detention. Limitations on the right to liberty are permissible if in accordance with procedure established by law, and if the limitation is reasonable, necessary and proportionate. The grounds for the offence, including the amendments, are prescribed by law, and only take effect following valid and lawful arrest for the criminal offence.

143. Placing this evidentiary burden on the defendant is reasonable, necessary and proportionate, as the defendant would have peculiar knowledge as to the circumstances of the display and if a legitimate purpose defence is applicable.

Right to the presumption of innocence in Article 14 of the ICCPR

144. The right to the presumption of innocence in Article 14 of the ICCPR provides that, in the determination of any criminal charge against a person, that person shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14(2) of the ICCPR provides that those charged with criminal offences have the right to be presumed innocent until proven guilty according to law. This is a fundamental principle of common law. The presumption of innocence imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proven beyond a reasonable doubt.

Introducing a new listing framework for prohibited hate groups

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145. Article 14 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new listing framework for prohibited hate groups, as the new associated offences expands the conduct that could be prosecuted under new Division 114B.

146. The inherent safeguards guaranteed by Australian court proceedings and the requirement on the prosecution to discharge the burden of proof by having to make out all the elements of an offence mean that a defendant's right to receive a fair trial has not been limited as a result of the new offences. New Part 5.3B clearly outlines the legislative framework and requirements necessary for prosecution of the new offences.

147. The new offences require the prosecution to bear the burden of proof in relation to all elements of the offences. In this sense, the offence does not infringe on the right to the presumption of innocence.

148. There are offence specific defences or exceptions, as well as general defences, to the offences in new Division 114B, where the defendant would bear the evidential or legal burden. In accordance with the Guide, this is reasonable and appropriate as the information required to prove the existence of the defences or exceptions would be peculiarly within the knowledge of the defendant. To the extent that placing the onus on the defendant to discharge an evidential or legal burden in relation to the defences or exceptions limits the presumption of innocence, it is reasonable and proportionate for the efficient administration of justice.

Introducing a new offence for serious racial vilification or advocating racial supremacy

149. Article 14 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new offence for intentionally inciting hatred towards another person or group of persons, or disseminating ideas of superiority over or hatred of another person or group of persons, on the grounds of race, colour or national or ethnic origin.

150. The inherent safeguards guaranteed by Australian court proceedings and the requirement on the prosecution to discharge the burden of proof by having to make out all the elements of an offence mean that a defendant's right to receive a fair trial has not been limited as a result of the new offence.

151. The new offence requires the prosecution to bear the burden of proof in relation to all elements of the offence. In this sense, the offence does not infringe on the right to the presumption of innocence.

152. There is an offence-specific defence available for conduct that consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion, where the defendant would bear the evidential burden. In accordance with the Guide, this is both reasonable and appropriate as the information required to prove the existence of the defence would be peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. To the extent that placing the evidential burden in relation to this defence limits the presumption of innocence, it is reasonable and appropriate.

Strengthening the existing prohibited symbols offences

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153. Article 14 of the ICCPR may be engaged by the amendments in this Bill that would repeal the public interest elements of the public display of prohibited symbols offences in sections 80.2H and 80.2HA and instead provide them as offence-specific defences. This would place an evidential burden on the alleged offender.

154. The amendments are in accordance with the Guide. Placing this evidentiary burden on the defendant is reasonable, necessary and proportionate, as the defendant would have peculiar knowledge as to the circumstances of the display and if a legitimate purpose defence is applicable. To the extent that placing the evidential burden in relation to the matters listed in the defence provisions limits the presumption of innocence, it is reasonable and proportionate.

Right to legality in Article 15 of the ICCPR

155. The right to legality in Article 15 of the ICCPR provides that laws must not impose criminal liability for acts that were not criminal offences at the time they were committed. This flows from the principle that criminal law should be sufficiently precise to enable persons to know in advance whether their conduct would be criminal. The prohibition on retrospective criminal laws is considered an absolute right, and as such cannot be limited for any reason, nor can it be suspended or restricted.

156. The amendments in Schedule 1, including the introduction of new offences, are consistent with the right to legality. They would not apply retrospectively as they would not criminalise conduct that an individual engaged in before the amendments and new offences would commence, or in relation to the listing framework for prohibited hate groups, before an organisation is listed as a prohibited hate group.

Right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the ICCPR

157. The right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the ICCPR prohibits unlawful or arbitrary interference with a person's privacy, family, home and correspondence, and prohibits unlawful attacks on a person's reputation. The United Nations Human Rights Committee (UNHRC) has interpreted the right to privacy as comprising freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

<u>Introducing a new listing framework for prohibited hate groups</u>

158. Article 17 of the ICCPR would be engaged by consequential amendments in this Bill, with respect to the new listing framework for prohibited hate groups, to the extent that they would amend law enforcement surveillance powers under the *Telecommunications (Interception and Access) Act 1979* (TIA Act).

159. The amendments would allow law enforcement to access telecommunications interception powers for the purposes of investigating Division 114B offences. These powers authorise the interception of communications made to or from a telecommunication service, which could occur in a private home and intrude into a person's private life.

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160. The exercise of these powers cannot be considered arbitrary because they are reasonable, necessary and proportionate to achieving the legitimate objective of protecting public safety and the Australian community from the spread of violence, racist rhetoric and hatred, including preventing and responding to conduct constituting hate crimes. The telecommunications interception powers also contain safeguards to ensure that they are not exercised arbitrarily, including that agencies can only obtain warrants or give authorisations for purposes relating to national security or law enforcement.

Right to freedom of thought, conscience and religion in Article 18 of the ICCPR

161. The right to freedom of thought, conscience and religion in Article 18 of the ICCPR provides the right to think freely, to entertain ideas and hold positions based on conscientious, religious or other beliefs. Subject to certain limitations, persons also have the right to adopt a religion or belief. It also includes the freedom, either individually or with others and whether in public or private, to manifest their religion or belief, including to worship, observe, practice and teach that religion. This right may be limited where such limitations are prescribed by law, and are necessary to protect public safety, order, health, morals or the fundamental rights and freedoms of others.

<u>Introducing aggravated offences for preachers and leaders who advocate or threaten force or violence and adults who seek to radicalise children</u>

162. Article 18 of the ICCPR would be engaged by the amendments in this Bill that would introduce aggravated offences for preachers and leaders who advocate or threaten force or violence and adults who seek to radicalise children.

163. Religious or spiritual leaders occupy a position of significant trust and authority in the community. This influence can be exploited where these leaders espouse violent racist and hateful rhetoric, increasing the likelihood that the people they lead are similarly radicalised and for conduct to be engaged in that endangers the lives and safety of protected groups and members of protected groups. Young people are also vulnerable to radicalisation and recruitment by violence extremist and terrorist groups, including mobilisation to violence.

164. The new aggravated offences would positively engage the right to freedom of thought, conscience and religion by supporting religious communities to be able to worship, observe, practice and teach their religion without fear of harm or being subjected to violence.

165. The amendments would protect these rights by targeting religious or spiritual leaders and adults that seek to radicalise children from disseminating violent extremist and harmful beliefs that promote violence and conduct that causes serious harm to the Australian community. The right to freedom of thought, conscience and religion is limited by the new aggravated offences in so far as the exercise of the right would not extend to conduct that amounts to advocating or threatening the use of force or violence. These limitations are necessary appropriate and proportionate as advocating such conduct may foster violence directed at people and groups practicing their religion and other protected people and groups, thereby infringing on their right to freedom of thought, conscience and religion.

<u>Introducing a new listing framework for prohibited hate groups</u>

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166. Article 18 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new listing framework for prohibited hate groups engaging in conduct constituting a hate crime. The framework would not generally limit this right, as it only seeks to criminalise conduct where a person has taken certain actions in relation to a prohibited hate group.

167. However, in preventing these actions, there may be some limitations on this right, should an organisation advocate particular practices or beliefs as part of conduct constituting a hate crime. To the extent there is any limitation, this is appropriate as the new offences would be prescribed by law, would only apply in relation to organisations specified (listed) as a prohibited hate groups where it is necessary to prevent harm to the Australian community, persons or groups on the basis of race or national or ethnic origin.

168. The framework for listing a prohibited hate group is not intended to capture mere expressions of opinion of belief. Rather, such a listing is predicated on the organisation engaging in a hate crime as defined in either new subsection 114A.3(1) or (2). Conduct would fall within this definition where it involves threats of force or violence, or other hate motivated offensive conduct. In such circumstances, the new offences would positively engage with these rights, by protecting the safety of groups who may otherwise be targeted on the basis of their race or national or ethnic origin, that safety being a precondition to the exercise of freedom of thought, belief or religion.

<u>Introducing a new offence for serious racial vilification or advocating racial supremacy</u>

169. Article 18 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new offence for intentionally inciting hatred towards another person or group of persons, or disseminating ideas of superiority over or hatred of another person or group of persons, on the grounds of race, colour or national or ethnic origin.

170. The new offence would positively engage the right to freedom of thought, conscience and religion by supporting protected groups to be able to exercise freedom of thought, conscience and religion without fear of harm or being subjected to violence. Vilification on the grounds of race, colour or national or ethnic origin is often a catalyst for more overt forms of violence that can cause serious harm to the targeted group, or members of a group.

171. The right to freedom of thought, conscience and religion is limited by the new offences in so far as the exercise of the right would not extend to conduct that amounts to racial vilification of a targeted person or group. These limitations are necessary, appropriate and proportionate noting that they apply to conduct inciting or promoting hatred and disseminating ideas of superiority at a sufficient level of seriousness that the conduct would cause a reasonable member of the target group to be intimidated, fear harassment or violence, of fear for their safety. The new offences would provide an avenue for law enforcement to intervene early to prevent racial vilification from escalating to violence.

172. The limitations on the right to freedom of thought, conscience and religion are themselves limited by the scope of the new offences and the availability of the good faith defence in section 80.3 of the Criminal Code. The defence would ensure that the new offences would not criminalise acts that are done in good faith, including commentary on matters of public interest. In this way, the defence would safeguard against the new offences unreasonably restricting the rights in Article 18 of the ICCPR.

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Strengthening existing prohibited symbols offences

173. Article 18 of the ICCPR would be engaged by amendments in this Bill that would repeal the public interest elements of the public display of prohibited symbols offences in sections 80.2H and 80.2HA and instead provide them as offence specific defences.

174. The availability of the offence specific defence is designed to protect the right to freedom of religion, conscience and thought. While prohibited symbols offences criminalise conduct that promotes and disseminates violent extremist and hateful beliefs that have led to violence, the offence specific defence recognises circumstances, including for religious purposes, for the public display or trade of prohibited symbols that are legitimate.

175. The defendant would bear the evidential or legal burden for whether the public display of a prohibited symbol would be considered by a reasonable person to be engaged in for a religious, academic, educational, artistic, literary or scientific purpose that is not contrary to the public interest. In accordance with the Guide, this is reasonable and appropriate as the information required to prove the existence of one of the prescribed defences would be peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. This is reasonable and proportionate as it would be relatively straightforward for the defendant to meet this threshold in comparison to the prosecution, as they have the necessary knowledge over their reasoning for undertaking the conduct.

Protection against exploitation, violence and abuse in Article 20 of the ICCPR; Right to equality before the law in Article 26 of the ICCPR; Condemnation of propaganda and organisations that attempt to justify discrimination or are based on racial supremacism in Article 4 of the CERD.

176. The protection against exploitation, violence and abuse in Article 20 of the ICCPR requires that countries outlaw the vilification of persons on national, racial or religious grounds amounting to incitement of discrimination, hostility or violence.

177. Australia has made a reservation in relation to Article 20 to the effect that the Commonwealth and the states had legislated with respect to the subject matter of Article 20, in matters of practical concern in the interest of public order, and that it therefore wished to reserve the right not to introduce further legislation on these matters. The proposed legislation would further support compliance with Article 20 of the ICCPR by criminalising certain forms of national, racial or religious hatred. The UNHRC has affirmed (and Australia has agreed) that the prohibitions required by Article 20 of the ICCPR are compatible with the right of freedom of expression, enshrined in Article 19 of the ICCPR.

178. The right to equality before the law in Article 26 of the ICCPR provides that the law should prohibit any discrimination, and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

179. The requirement to condemn propaganda and organisations that attempt to justify discrimination or are based on racial supremacism in Article 4 of the CERD requires countries to adopt immediate and positive measures designed to eradicate all incitement

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to, or acts of, racial discrimination. Article 4(a) provides for the criminalisation of all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any racial or ethnic groups.

180. Australia has made reservation in relation to Article 4(a) on the basis that it was not in a position to specifically treat as offences all the matters covered by the article at the time of ratification. The proposed legislation would promote the intent of the CERD to eliminate all forms of racial discrimination and incitement to discrimination.

Aggravating offences for preachers and leaders who advocate or threaten force or violence and adults seeking to radicalise children

181. Articles 20 and 26 of the ICCPR, and the intent of the CERD, would be positively engaged by the amendments in this Bill that would introduce aggravated offences for preachers and leaders who promote violence and adults who seek to radicalise children.

182. Religious or spiritual leaders occupy a position of significant trust and authority in the community. This influence can be exploited where these leaders espouse violent extremist and hateful rhetoric, increasing the likelihood that the people they lead are similarly radicalised and for conduct to be engaged in that endangers the lives and safety of protected groups and members of protected groups. Young people are also vulnerable to radicalisation and recruitment by violent extremist and terrorist groups, including mobilisation to violence.

183. Advocating the use of force or violence against groups, or members of groups, distinguished by a protected attribute is serious, hateful and discriminatory conduct that is incompatible with protections against exploitation, violence and abuse and the intent of the CERD. Similarly, conduct that is directed towards a child for the purposes of disseminating violent extremist material radicalises and mobilises them to violence.

184. The new aggravated offences send a clear message that persons and groups distinguished by a protected attribute have a right to live their lives free from exploitation, violence and abuse, including all forms of hatred. It would ensure that those who advocate force or violence or are reckless as to whether that force or violence will occur, can face serious consequences. The new aggravated offences therefore positively engage and advance Articles 20 and 26 of the ICCPR and Article 4 of the CERD.

Increasing penalties for advocating or threatening force or violence

185. Articles 20 and 26 of the ICCPR, and the intent of the CERD, would be positively engaged by the amendments in this Bill that would increase the maximum penalties for offences for advocating or threatening force or violence against protected groups, members of groups and their property in sections 80.2A-80.2BE of the Criminal Code.

186. Threatening to use force or violence against a group, or members of a group, distinguished by a protected attribute is serious, hateful and discriminatory conduct that is incompatible with protections against exploitation, violence and abuse and the intent of the CERD.

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187. The amendments would send a clear message that persons and groups distinguished by a protected attribute have a right to protection against exploitation, violence and abuse. It would ensure that those who advocate force or violence or are reckless as to whether that for or violence will occur, can face serious consequences. The increases in maximum penalties therefore positively engage and advance Articles 20 and 26 of the ICCPR and Article 4 of the CERD.

Introducing an aggravated sentencing factor for conduct motivated by racial hate

188. Articles 20 and 26 of the ICCPR, and the intent of the CERD, would be positively engaged by the amendments in this Bill that would introduce a new aggravated sentencing factor for conduct that is motivated by hate towards a person's race or national or ethnic origin.

189. Offences that are motivated by racial hatred can cause profound harm, beyond that which is generally experienced by the offending conduct in the absence of a hate motivation. It is an attack on the safety and dignity of targeted groups, and members of targeted groups, which affects the wellbeing of not only those who were targeted, but of their whole community.

190. The amendments would send a clear message that persons, and groups of persons, distinguished by race or national or ethnic origin have a right to protection against exploitation, violence and abuse, including all forms of hatred and incitement to discrimination. The new aggravated sentencing factor would affirm community values of equality and dignity and support the rights of groups, and members of groups, by recognising the greater harm caused by offences motivated by racial hate and ensuring that these circumstances have greater bearing on sentencing of an offender.

Introducing a new listing framework for prohibited hate groups

191. Articles 20 and 26 of the ICCPR, and the intent of the CERD, would be positively engaged by the amendments in this Bill that would introduce a new listing framework for prohibited hate groups by preventing persons and groups distinguished by race or national or ethnic origin from experiencing forms of hatred, violence and discrimination.

192. A prohibited hate group is an organisation that has directly engaged in, prepared or planned to engage in, or assisted the engagement in conduct constituting a hate crime, or advocated engaging in conduct constituting a hate crime. These organisations target persons or groups distinguished by race or national or ethnic origin for the purposes of engaging in or inciting discrimination, hatred or violence or disseminating ideas based on superiority.

193. The new listing framework, and associated offences, would send a clear message that it is not acceptable for such ideas and acts to be endorsed, propagated or undertaken against persons, or groups of persons, distinguished by race or national or ethnic origin in Australia. The new offences would discourage membership of and support for prohibited hate groups that espouse violent racist rhetoric and diminish their capacity to do so.

Introducing a new offence for serious racial vilification or advocating racial supremacy

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194. Articles 20 and 26 of the ICCPR, and the intent of the CERD, would be positively engaged by the amendments in this Bill that would introduce a new offence for intentionally inciting hatred towards another person or group of persons, or disseminating ideas of superiority over or hatred of another person or group of persons, on the grounds of race, colour or national or ethnic origin.

195. The incitement of hatred and the dissemination of ideas of superiority over or hatred of another person or group of persons on the grounds of race, colour or national or ethnic origin is serious, hateful and dehumanising conduct that is incompatible with protections against exploitation, violence and abuse, including all forms of hatred and incitement to discrimination, and the intent of the CERD. This conduct communicates to a person or group of persons a view that they are inferior and exposes them to hatred and contempt.

196. The new offence would enhance protections for persons, and groups of persons, distinguished by race, colour or national or ethnic origin from these harms, and provide an avenue for law enforcement to intervene early to prevent racial vilification from escalating to violence. The amendments would send a clear message that these persons and groups have a right to live their lives free from racial hatred by ensuring that those who engage in racial vilification face serious criminal consequences. Accordingly, the new offence supports rights under Articles 20 and 26 of the ICCPR and Article 4 of the CERD.

Strengthening existing prohibited symbols offences

197. Articles 20 and 26, and the intent of the CERD, would be positively engaged by the amendments in this Bill that would strengthen the offences for public display of, and trading in, prohibited symbols. The amendments would further deter and prevent the use of prohibited symbols that promote and disseminate ideologies that have led to genocide and politically motivated violence.

198. The amendments would further support protections against exploitation, violence and abuse and the intent of the CERD with the introduction of a seizure power under new section 80.2N, which would empower law enforcement to disrupt the use of prohibited symbols to perpetuate extremist ideologies.

199. This seizure power will only be employed by a police officer if it is for the purpose of preventing the commission, or continuing commission, of an existing prohibited symbols offence under subsections 80.2H or 80.2HA and the police officer has a reasonable suspicion that criteria under the directions power at 80.2K are being met. These criteria ensures that the seizure power is being used appropriately, and meeting the objectives set out by Article 20, 26, and the CERD by effectively and proportionally disrupting these offences.

Right to freedom of expression in Article 19 of the ICCPR; Right to enjoy and benefit from culture in Article 27 of the ICCPR; Right to take part in cultural life in Article 15 of the ICESCR

200. Article 19(1) of the ICCPR establishes the 'right to hold opinions without interference'. This right cannot be subject to any exception or restriction, except as specified under Article 4, 'in time of public emergency which threatens the life of the nation and the

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existence of which is officially proclaimed'. Such exceptions or restrictions are subject to limitations specified in Article 4.

201. Article 19(2) of the ICCPR provides that all individuals have the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, through any media of a person's choice. Article 19(3) provides that the right to freedom of expression may be subject to limitation for specified purposes, including the respect for the rights or reputations of others where such limitation is provided by law and are reasonable, necessary and proportionate to a legitimate objective. The requirement of necessity implies that any restriction must be proportionate in severity and intensity to the purpose sought to be achieved.

202. The right to enjoy and benefit from culture in Article 27 of the ICCPR protects the rights of individuals belonging to ethnic, religious and linguistic minorities within a country to enjoy their own culture, practice their own religion and use their own language.

203. Articles 15(1)(a) and 15(1)(b) of the ICESCR protect the right of all persons to take part in cultural life and enjoy the benefits of scientific process and its applications. Article 15(1)(c) protects the moral and material interests of the authors of scientific, literary or artistic productions.

<u>Aggravating offences for preachers and leaders who advocate or threaten force or violence and adults seeking to radicalise children</u>

204. Articles 19 and 27 of the ICCPR, and Article 15 of the ICESCR, would be engaged by the amendments in this Bill that would introduce aggravated offences for preachers and leaders who advocate or threaten force or violence and adults who seek to radicalise children.

205. Religious or spiritual leaders occupy a position of significant trust and authority in the community. This influence can be exploited where these leaders espouse violent extremist and hateful rhetoric, increasing the likelihood that they people they lead are similarly radicalised and for conduct to be engaged in that endangers the lives and safety of protected groups and members of protected groups. Young people are also vulnerable to radicalisation and recruitment by violence extremist and terrorist groups, including mobilisation to violence.

206. The new aggravated offences would positively engage the rights to freedom of expression, to enjoy and benefit from culture and to take part in cultural life by ensuring that groups, and members of groups, distinguished by a protected attribute are able to enjoy these rights without fear of harm or being subjected to violence.

207. The amendments would protect these rights by targeting religious or spiritual leaders and adults that seek to radicalise children from disseminating violent extremist and harmful beliefs that may lead to serious harm to the Australian community. The right to freedom of expression is limited by the new aggravated offences in so far as the exercise of the right would not extend to conduct that amounts to perpetuating beliefs that advocate or threaten force, violence or promote violent extremism.

208. These limitations are necessary, appropriate and proportionate as they would be prescribed by law and would be targeting conduct likely to foster violence directed at

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persons, and groups of persons, distinguished by a protected attribute, thereby infringing on their rights in Articles 19 and 27 of the ICCPR and Article 15 of the ICESCR.

Introducing a new listing framework for prohibited hate groups

209. Article 19 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new listing framework for prohibited hate groups to the extent that it would allow an organisation to be listed as a prohibited hate group if that organisation was to engage in conduct constituting hate crimes targeted at persons or groups distinguished by race or national or ethnic origin, and criminalising certain dealings with prohibited hate groups.

210. The framework for listing a prohibited hate group is not intended to capture mere expressions of opinion of belief. Rather, such a listing is predicated on the organisation engaging in a hate crime as defined in either new subsection 114A.3(1) or (2). Conduct would fall within this definition where it involves threats of force or violence, or other hate motivated offensive conduct, targeted at persons or groups distinguished by race or national or ethnic origin. If an organisation was listed as a prohibited hate group, certain engagements with that organisation, such as being a member, directing activities or providing support to that organisation, would be criminalised.

211. These organisations target persons or groups distinguished by race or national or ethnic origin with hateful or violent rhetoric. To the extent the listing of an organisation, and resulting criminality, limits the right to freedom of expression, this is necessary, appropriate and proportionate. These limitations would be prescribed by law and would protect the broader Australian community from the activities of prohibited hate groups.

212. The amendments would also positively engage the rights to freedom of expression, to enjoy and benefit from culture and take part in cultural life. The violent extremist and hateful beliefs espoused by prohibited hate groups cause social disruption and significant harm to persons, and groups of persons, distinguished by race or national or ethnic origin. The new offences would promote the rights of communities in Australia to engage in, and celebrate, their culture and identity without fear of harm.

Introducing a new offence for serious racial vilification or advocating racial supremacy

213. Article 19 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new offence for intentionally inciting hatred towards another person or group of persons, or disseminating ideas of superiority over or hatred of another person or group of persons, on the grounds of race, colour or national or ethnic origin.

214. The new offences would also engage the rights to enjoy and benefit from culture and take part in cultural life by criminalising conduct that amounts to racial hatred.

215. The new offence would limit the right to freedom of expression by limiting an individual's ability to communicate or impart certain information and ideas publicly, where their communication amounts to incitement of hatred or the dissemination of ideas of superiority that targets persons, or groups of persons, distinguished by race, colour or national or ethnic origin.

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216. The UNHRC has recognised that vilification of a person, or group of persons, distinguished by a protected attribute, can constitute discrimination if it has the effect of nullifying or impairing the exercise by that person, or group of persons, of their human rights and fundamental freedoms on an equal footing with others. The limitation on freedom of expression arising from the new offence is reasonable, necessary and proportionate to protect members of the Australian community from serious harm, violence and restriction from community life likely to rise from racial vilification. The amendments are justified as they are aimed at protecting the rights of these persons, and groups of persons, on equal footing with others.

217. If this conduct were left undeterred to be normalised, the vilification of persons or groups on the basis of race, colour or national or ethnic origin would result in serious damage, compromise public order and increase the likelihood that anti-social behaviour, including violence, would be engaged in. The amendments to criminalise serious racial vilification is therefore a critical measure to protect the community from these harms.

218. The limitation on the right to expression is itself limited by the scope of the new offences and the availability of the good faith defence in section 80.3 of the Criminal Code. The defence would ensure that the new offences would not criminalise acts that are done in good faith, including commentary on matters of public interest. Similarly, the offence would only criminalise conduct at a sufficient level of seriousness that it would cause a reasonable member of the target group to be intimidated, fear harassment or violence, of fear for their safety. There is also an offence-specific defence available for conduct that consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion, where the defendant would bear the evidential burden. In this way, the construction of the offence would safeguard against unreasonably restricting the rights in Article 19 of the ICCPR.

Strengthening existing prohibited symbols offences

219. Articles 19 and 27 of the ICCPR, and Article 15 of the ICESCR, would be engaged by amendments in this Bill that would strengthen the public display of, and trading in, prohibited symbols offences by lowering the threshold of the offences, and moving the public interest elements of the offence to instead be offence-specific defences.

220. The amendments will also narrow the reasonable person test for these offences, to a reasonable person who is a member of a group of persons distinguished by race, religion or nationality. This is designed to positively engage these rights by directing the court to consider the experiences, perspectives and characteristics of a person with the lived experience of a person distinguished by race, religion or nationality who could be targeted by the public display of a prohibited symbol. This perspective is appropriate in engaging with these rights as it takes into consideration the unique experiences of the people most likely to be harmed by the conduct the offence is aiming to prevent.

221. The limitation on the right to expression is appropriate as these symbols represent racist and hateful ideologies which cause significant harm to members of targeted groups in the Australian community and are used as tools of vilification and radicalisation. The UNHRC has recognised that vilification of a person, or group of persons, distinguished by a protected attribute, can constitute discrimination if it has the effect of nullifying or impairing the exercise by that person, or group of persons, of their human rights and fundamental freedoms on an equal footing with others. The amendments would

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strengthening prohibited hate symbol offences to further protect the right of members of the Australian community not to be intimidated or harassed and to prevent the incitement of others – who are susceptible to radicalisation – to hatred and violence.

Right to peaceful assembly in Article 21 of the ICCPR

222. The right to peaceful assembly in Article 21 of the ICCPR provides that countries must recognise the right for persons, and groups of persons, to peacefully assemble, and only impose certain restrictions. These restrictions must be prescribed by law and necessary in a democratic society to either protection national security, public safety, public order or the protection of public health, morals or the rights and freedoms of others.

Aggravated offences for preachers and leaders who advocate or threaten force or violence and adults seeking to radicalise children

223. Article 21 of the ICCPR would be engaged by amendments in this Bill that would introduce aggravated offences for preachers and leaders who advocate or threaten force or violence.

224. Religious or spiritual leaders occupy a position of significant trust and authority in the community. This influence can be exploited where these leaders espouse violent extremist and hateful rhetoric, increasing the likelihood that the people they lead are similarly radicalised and for conduct to be engaged in that endangers the lives and safety of protected groups and members of protected groups. Young people are also vulnerable to radicalisation and recruitment by violence extremist and terrorist groups, including mobilisation to violence.

225. The new aggravated offences would positively engage the right to peaceful assembly by ensuring that persons and groups distinguished by a protected attribute are able to enjoy this right without fear of harm or being subjected to violence.

Introducing a new listing framework for prohibited hate groups

226. Article 21 of the ICCPR would be engaged by the amendments in this Bill that would introduce a new listing framework for prohibited hate groups to the extent that it would criminalise activities engaged in by prohibited hate groups.

227. The activities of prohibited hate groups that engage in conduct constituting a hate crime are particularly harmful, targeting persons or groups distinguished race or national or ethnic origin. An assembly that engages in, or advocates for, violent extremist and hateful rhetoric or conduct constituting a hate crime does so to the detriment of public safety and public order.

228. The new listing framework, and associated offences, would positively engage the right to peaceful assembly by ensuring that persons and groups distinguished by race or national or ethnic origin, are able to enjoy this right without fear of harm or being subjected to violence.

229. The amendments would protect these rights by targeting prohibited hate groups that engage in and advocate for conduct constituting a hate crime, causing serious harm to the Australian community. The right to peaceful assembly is limited by the new listing

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framework, and associated offences, in so far as the exercise of the right would not extend to a prohibited hate group.

230. The UNHRC has recognised that vilification of a person, or group of persons, distinguished by a protected attribute, can constitute discrimination if it has the effect of nullifying or impairing the exercise by that person, or group of persons, of their human rights and fundamental freedoms on an equal footing with others. The limitations imposed on prohibited hate groups are necessary, appropriate and proportionate as they would be prescribed by law and would be targeting conduct likely to foster violence directed at protected groups, and members of protected groups, thereby infringing on their rights in Article 21 of the ICCPR. The amendments are justified as they are aimed at protecting the rights of protected groups, and members of protected groups, on equal footing with others.

Right to freedom of association in Article 22 of the ICCPR

231. The right to freedom of association in Article 22 of the ICCPR protects the right of all persons to group together voluntarily for a common goal and to form and join an organisation. Article 22(2) provides that this right is not absolute and may be limited for certain purposes, including public safety and the protection of the rights and freedoms of others.

Introducing a new listing framework for prohibited hate groups

232. Article 22 of the ICCPR would be engaged by amendments in this Bill that would introduce a new listing framework for prohibited hate groups to the extent that the new membership offence, and other offences, would seek to prevent people from being a member, associating or engage in dealings with a prohibited hate group.

233. By criminalising membership of a prohibited hate group and other dealings with a prohibited hate group, new Part 5.3B directly impacts group's ability to grow and spread violent extremist and hateful rhetoric and engage in conduct constituting a hate crime. The limitations on the right to freedom of association are necessary, appropriate and proportionate as they would be prescribed in law and would advance the legitimate objectives of ensuring public safety and protecting the rights and freedoms of others. The measure does not impinge on the freedom to associate with any person or group other than a prohibited hate group.

234. The new membership offence is proportionate in the manner in which the offence criminalises membership of a prohibited hate group. This includes an offence-specific defence where a person proves they took all reasonable steps to cease to be a member of the organisation as soon as practicable after they knew the organisation was a prohibited hate group. The offence-specific defence aligns with those currently available for the comparable membership offence of a terrorist organisation and a state sponsor of terrorism.

235. The new listing framework would contain safeguards to ensure that the recommendation to list group is appropriate, including that the Director-General of Security must provide the AFP Minister with written advice recommending that listing should be considered, prior to the AFP Minister recommending to the Governor-General that an organisation be listed. The requirement to receive advice from the Director-General of Security is an

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additional safeguard to ensure the new listing framework is robust, accountable and are based on advice and intelligence from intelligence and law enforcement agencies.

236. The AFP Minister must also obtain the Attorney-General's written agreement, and arrange for the Leader of the Opposition in the House of Representatives to be briefed on a proposed regulation to list an organisation. The amendments would also provide the PJCIS with a mandate to review instruments in respect of prohibited hate groups. Each of these measures ensures that a proposed listing is appropriate.

237. Due to the severity of the danger posed by prohibited hate groups, and noting the limited scope of the offences, it is reasonable, necessary and proportionate to limit the right of association of individuals who, by their membership of a prohibited hate group, pose a threat to the Australian community.

Commitment to promote the best interests of the child and commitment to promote the establishment of measures for dealing with such children without resorting to judicial proceedings in Articles 3 and 40 of the CRC

238. The CRC provides that where appropriate and desirable, and in a manner that respects human rights, states should deal with children accused of a crime without resorting to judicial proceedings, such as by way of diversionary programs. Under the CRC, any action undertaken by courts of law or legislative bodies must have the best interests of the child as the primary consideration. The CRC provides that all countries are required to recognise the right of a child accused of a criminal offence to be treated in a manner consistent with the promotion of the child's sense of dignity and which considers the child's age and the desirability of promoting the child's reintegration into society.

239. Article 40 of the CRC would be engaged by amendments in the Bill that would introduce new and amend existing offence, thereby subjecting children who are above the age of criminal responsibility to judicial proceedings. It is an unfortunate reality that children have allegedly been involved or engaged in hate crimes. Recent years have seen an increase in the number of children being radicalised, planning and engaging in terrorism. However, any limitation of this right is reasonable and proportionate to achieve the legitimate purpose of protecting Australia's national security interests and to protect children targeted by those that seek to harm them.

240. It is appropriate that criminal liability apply to the new and amended offences in this Bill if the prosecution establishes that any person has engaged in the relevant conduct. The conduct criminalised by the new and amended offences has the likelihood of either directly or indirectly causing serious harm to the Australian community. Allowing this conduct to continue unchecked may lead to an escalation of that conduct, resulting in even more serious harms, including acts of physical violence or terrorism.

241. All children under the age of 18 are afforded certain rights, accounting for their vulnerability, and are guaranteed these rights without discrimination on any grounds. The new and amended offences would protect the rights of the child, as they would promote their health, safety and wellbeing, and impose serious criminal consequences for adults who seek to radicalise children.

242. The AFP, including its partner agencies within the Joint Counter Terrorism Teams, and the Commonwealth Department of Public Prosecutions have discretion on whether to

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progress a matter for investigation and prosecution respectively. Where children are involved in offending, the AFP with their partners will consider diversionary approaches where appropriate and in the best interests of the child. The AFP works collaboratively with Commonwealth, state and territory partners in considering the most appropriate wrap-around support services available for children. Investigative decisions may also involve engagement with children and their parents or guardians to deter them from committing further offences or prevent further radicalisation, rather than progressing charges. This has the potential to curb further offending, and issuing a caution may induce a more positive outcome for the young person rather than treating them as an alleged criminal.

243. Having regard to the above, the offences would protect the rights of children. The safeguards above will minimise the risk of inappropriate charging and prosecution of minors in relation to the new offences.

SCHEDULE 2 – MIGRATION AMENDMENTS

Rights in relation to the expulsion of aliens in Article 13 of the ICCPR

244. Article 13 of the ICCPR states:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority

245. In its General Comment 15, the UNHRC stated that:

The particular rights of article 13 only protect those aliens who are lawfully in the territory of a State party. This means that national law concerning the requirements for entry and stay must be taken into account in determining the scope of that protection, and that illegal entrants and aliens who have stayed longer than the law or their permits allow, in particular, are not covered by its provisions. However, if the legality of an alien's entry or stay is in dispute, any decision on this point leading to his expulsion or deportation ought to be taken in accordance with article 13.

246. As the cancellation of a visa held by, or a refusal of a visa subsequently applied for by, a non-citizen lawfully in Australia can lead to removal, the cancellation or refusal process as a whole can amount to expulsion as contemplated in Article 13 of the ICCPR.

247. Under the proposed amendments to section 500A and section 501 of the *Migration Act 1958* (Migration Act), a non-citizen may be considered for visa refusal or cancellation, where the Minister administering the Migration Act is satisfied (subsection 501(1)) or reasonably suspects (subsections 501(2) and (3)) or is of the opinion (section 500A) that the non-citizen is or has been at any time a member of, or had an association with an organisation that is or was (at the relevant time) a prohibited hate group, a state sponsor of terrorism or a terrorist organisation, has been involved in conduct constituting a hate crime (as defined for the purposes of the Migration Act), has publicly made or endorsed statements that involve the dissemination of ideas based on the superiority over or hatred

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of other persons on the basis of one or more specified characteristics, or has encouraged other persons to make such a statement, such that there is a risk of harm to the Australian community or a segment of that community if the non-citizen were allowed to enter or remain in Australia.

248. Where a non-citizen does not satisfy the Minister administering the Migration Act (or their delegate) that they pass the character test, the Minister may refuse to grant a visa under subsection 501(1) or cancel a visa that has been granted to the person under subsections 501(2) or (3). A decision under subsection 501(1) or subsection 501(2) would be subject to the rules of natural justice, allowing the non-citizen to submit reasons as to why the visa should not be refused or cancelled, and would need to be reached in accordance with the law.

249. The Minister administering the Migration Act may, under existing subsection 501(3), personally refuse to grant a visa to a person, or to cancel a visa that has been granted to a person, where they reasonably suspect that the person does not pass the character test, and they are satisfied that the refusal or cancellation is in the national interest. The term 'national interest' has a broad meaning and refers to matters which relate to Australia's standing, security and interests. For example, these matters may include governmental concerns related to such matters as public safety, border protection, national security, defence, Australia's economic interests, Australia's international obligations and its relations with other countries.

250. Decisions of the Minister administering the Migration Act under subsection 501(3), which exclude natural justice, may be subject to judicial review by the Federal Court of Australia under Part 8 of the Migration Act or by the High Court under section 75(v) of the Australian Constitution. The availability of judicial review assists in ensuring that the Minister acts reasonably and in good faith.

251. Under the proposed amendments the Minister administering the Migration Act may, under section 500A, personally refuse to grant a temporary safe haven visa to a person, or to cancel a temporary safe haven visa that has been granted to a person where they are of the opinion the person has engaged in spreading hatred and extremism. The rules of natural justice do not apply to a decision taken by the Minister under section 500A. Decisions to refuse or cancel a visa under section 500A may be subject to judicial review by the High Court under section 75(v) of the Australian Constitution. The availability of judicial review assists in ensuring that the Minister acts reasonably and in good faith.

252. That decisions made by the Minister administering the Migration Act personally under subsection 501(3) and section 500A of the Migration Act are not subject to the rules of natural justice reflects the need for the Minister to act decisively and without notice or delay in circumstances involving serious risk to the Australian community. The exclusion of natural justice is confined to this narrow class of decisions exercised personally by the Minister and is accompanied by important safeguards including the availability of judicial review to ensure decisions are made lawfully and reasonably.

253. To the extent that the proposed new visa refusal and cancellation grounds engage rights in relation to the expulsion of aliens under Article 13, the obligation to provide natural justice and the availability of merits review (for decisions under subsection 501(1) and subsection 501(2)), the ability to make submissions in support of revocation of a decision

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taken under section 501(3), and the availability of judicial review for decisions under sections 500A and 501 ensure that the measures are consistent with that right.

Right to hold opinions without interference and freedom of expression in Article 19 of the ICCPR

254. Article 19 of the ICCPR relevantly provides:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

255. Article 20(2) of the ICCPR provides that:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

256. The right to freedom of opinion and expression is not absolute. Article 19(3) states that the right to freedom of opinion and expression may be subject to certain restrictions provided by law where necessary for the respect of the rights or reputations of others or for the protection of national security or public order, or public health or morals. The restriction must be necessary to achieve the desired purpose and proportionate to the need on which the limitation is predicated. To this end, the restriction must be the least intrusive instrument among those which might achieve their protective functions; and it must be proportionate to the interest to be protected.

257. The amendments to the character test and to the grounds for refusal or cancellation of temporary safe haven visas may limit the right to freedom of expression to the extent that visa refusals and cancellations may be based on a non-citizen's membership of, or association with, a terrorist organisation, state sponsor of terrorism or a prohibited hate group, their involvement in conduct constituting a hate crime (as defined in section 114A.3 of the Criminal Code), the public making of statements that involve the dissemination of ideas based on superiority over, or hatred of, other persons on the basis of race, colour,or national or ethnic origin, or the endorsement or encouragement of the making of such statements, which they may claim to be an exercise of their freedom of expression.

258. The amendments to the character test do not criminalise or target expression of lawful political communication.

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259. The powers of visa refusal or cancellation relating to the new grounds are discretionary, applied on a case-by-case basis, and subject to established safeguards, including access to merits review for decisions under subsections 501(1) and (2) and judicial review.

260. The amendments to the character test and to the grounds for refusal or cancellation of temporary safe haven visas are intended to protect the Australian community from the risk of harm posed by non-citizens who engage in hate motivated conduct and conduct or offences relating to the spread of hatred and extremism which threatens the Australian community or a segment of the Australian community and so are necessary to pursue the legitimate objective of protecting public order, safety, and the rights and freedom of others in the Australian community.

Right to freedom of thought, conscience and religion in Article 18 of the ICCPR

261. Article 18 of the ICCPR relevantly provides that:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

...

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

...

262. The right to freedom of thought, conscience and religion is not absolute. Article 18(3) states that, in order to be a permissible limitation as a matter of international human rights law, any restriction on the freedom of thought, conscience and religion must be provided by law, pursue a legitimate aim (as listed under Art 18(3)), and be necessary for achieving that legitimate aim.

263. The amendments to the character test and to the grounds for refusal or cancellation of temporary safe haven visas may limit the right to freedom of thought, conscience and religion to the extent that visa refusal or cancellation may be based on a non-citizen's membership of, or association with, a terrorist organisation, state sponsor of terrorism or a prohibited hate group, their involvement in conduct constituting a hate crime (as defined for the purposes of the Migration Act), or the public making of statements that involve the dissemination of ideas based on superiority over, or hatred of, other persons on the basis of race, colour, or national or ethnic origin, which they may claim to be an exercise of their freedom of thought, conscience or religion or the endorsement or encouragement of such statements.

264. The amendments to the character test and to the grounds for refusal or cancellation of temporary safe haven visas safeguard the right to freedom of thought, conscience and religion by confining relevant associations with an organisation to those which provide or provided support to the organisation in relation to the purposes of the organisation. Associations with an organisation that do not provide support to the purposes of the

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organisation will not be a basis upon which to refuse or cancel a visa. That may include where the association is engaged in by the person in a place being used for public religious worship and takes place in the course of practicing a religion.

265. The powers of visa refusal or cancellation relating to the new grounds are discretionary, applied on a case-by-case basis, and subject to established safeguards, including access to merits review for decisions under subsections 501(1) and (2) and judicial review.

266. The amendments are intended to protect the Australian community from the risk of harm posed by non-citizens who engage in hate motivated conduct and conduct or offences relating to the spread of hatred and extremism which threatens the Australian community or a segment of the Australian community and so are necessary to pursue the legitimate objective of protecting public order, safety, and the rights and freedom of others in the Australian community.

Right to freedom of association in Article 22 of the ICCPR

267. Article 22 of the ICCPR relevantly states:

1. Everyone shall have the right to freedom of association with others...

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others...

268. The right to freedom of association is not absolute and may be subject to restrictions as prescribed by law and which are (relevantly) necessary in the interests of national security or public safety, public order, or the protection of the rights and freedoms of others.

269. The amendments to the new grounds for visa refusal or cancellation may limit the right to freedom of association to the extent that visa refusal or cancellation may be based on a non-citizen's membership of, or association with, a terrorist organisation, state sponsor of terrorism or a prohibited hate group.

270. The amendments to the new grounds for visa refusal or cancellation safeguard the right to freedom of association by confining relevant associations with an organisation to those which provide or provided support to the organisation in relation to the purposes of the organisation. Associations with an organisation that do not provide support to the purposes of the organisation will not be a basis upon which to refuse or cancel a visa. That may include where it is engaged in by the person in a place used for public religious worship and takes place in the course of practicing a religion, or where it is engaged in for the purpose of providing aid of a humanitarian nature, is engaged in for the purposes of providing or receiving legal advice or representation, or is with a close family member relating to matters of a domestic or family concern.

271. The measures do not themselves create a prohibition on membership or association with a terrorist organisation, state sponsor of terrorism or prohibited hate group, but may have the effect of influencing an individual such that they choose not to associate where the consequence of membership or association may be a failure to pass the new grounds for visa refusal or cancellation and so face visa cancellation or refusal.

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272. The new grounds for visa refusal or cancellation are discretionary, applied on a case-by-case basis, and subject to established safeguards, including access to merits review (for decisions under subsection 501(1) and subsection 501(2)) and judicial review.

273. The amendments are intended to protect the Australian community from the risk of harm posed by non-citizens who engage in hate motivated conduct and conduct or offences relating to the spread of hatred and extremism which threatens the Australian community or a segment of the Australian community and so are necessary to pursue the legitimate objective of protecting public order, safety, and the rights and freedom of others in the Australian community.

Right to privacy in Article 17 of the ICCPR

274. Article 17(1) of the ICCPR states:

No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

275. Pursuant to Article 17(1) of the ICCPR, an interference with an individual's privacy must have a lawful basis and not be arbitrary.

276. The right to privacy may be subject to permissible limitations. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UNHRC has interpreted the requirement of 'reasonableness' such that any interference with privacy is proportional to the end sought and be necessary in the circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity. In essence, this will require that limitations:
- serve a legitimate objective;
- adopt a means that is rationally connected to that objective; and
- the means adopted are not more restrictive than they need to be to achieve that objective.

277. The amendments to add new grounds for visa refusal or cancellation may engage this right where the Minister administering the Migration Act considers information relating to a person's conduct, including online activity. The primary aim of the new grounds for visa refusal or cancellation is to ensure that the Australian community, or segments of the community, are protected from hate motivated conduct by non-citizens who are a member of, or associated with, a terrorist group, state sponsor of terrorism or a prohibited hate group, who have been involved in conduct constituting a hate crime (as defined for the purposes of the Migration Act), or who make, endorse, or encourage the making of statements that involve the dissemination of ideas based on superiority over or hatred of other persons on the basis of race, colour, or national or ethnic origin.

278. To the extent that the new grounds for visa refusal or cancellation may limit the right to privacy through administrative activities, which may include consideration of publicly available information, including online material, where relevant to the assessment of character, any interference with or limitation of privacy is authorised by law, and will be governed by clear procedural guidelines to ensure it is a proportionate and necessary response to promote the safety of the community. The consideration of a non-citizen's

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relevant conduct is necessary to assess risks to the Australian community and is subject to existing safeguards governing the collection, use, and disclosure of information under migration law.

279. While the amendments do not expand the types of identifying information that may be collected or disclosed, as the Bill consequentially amends section 5C of the Migration Act, expanding the definition of 'character concern' to align with the proposed amended content of the grounds for visa refusal and cancellation in section 500A and section 501, it also extends the circumstances in which the Department of Home Affairs can collect and disclose identifying information for the purpose of identifying non-citizens who are of character concern. These amendments will facilitate the lawful disclosure of non-citizens' identifying information where non-citizens are of character concern, under subparagraph 336E(2)(a)(iii) of the Migration Act. That provision relevantly permits the disclosure of identifying information where the disclosure would be for the purpose of data-matching in order to identify non-citizens who have a criminal history or who are of character concern.

280. The amendments do not expand the types of identifying information that can be collected from non-citizens, or the circumstances in which it may lawfully be disclosed, but ensure that the definition of ***character concern*** encompasses all elements of the character test or the grounds for refusal and cancellation of temporary safe haven visas. As such, the Bill's amendment to the meaning of 'character concern' at section 5C of the Migration Act does not alter the current requirements relating to the disclosure of identifying information, thus maintaining adequate legal privacy protections for non-citizens.

281. The robust framework in Part 4A of the Migration Act, which creates a series of rules and offences that govern the access, disclosure, modification and destruction of identifying information (including personal identifiers) is not amended by the Bill. Under section 336E of the Migration Act, a person commits an offence if their conduct causes the disclosure of identifying information and the disclosure is not a permitted disclosure. The permitted disclosures are set out in subsection 336E(2).

282. Where information is provided to the Department of Home Affairs, for example in the course of natural justice processes, the collection, use and disclosure of that information, will also be in accordance with the requirements of the *Privacy Act 1988* (Privacy Act) and, where relevant, provisions of other relevant legislation such as the ABF Act.

283. The amendments to the grounds for visa refusal and cancellation are to achieve a legitimate purpose under the ICCPR — to protect the Australian community from non-citizens who pose an unacceptable risk to the community. Permitting the collection and disclosure of identifying information, such as photographs, signatures and other personal identifiers as defined in section 5A of the Migration Act, for the purpose of identifying persons of character concern, is a reasonable and proportionate measure to achieve the intended operation of the character provisions for the purpose of protecting the Australian community. Any interference with the privacy of a person assessed as being of character concern for the purposes of the Migration Act, would therefore not be unlawful or arbitrary.

Rights relating to families and children

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284. Article 17(1) of the ICCPR states:

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

285. Article 23(1) of the ICCPR states:

The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

286. Article 3(1) of the CRC states:

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

287. Article 10 of the CRC states that:

In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for members of their family.

288. Whether interference with family is arbitrary in this context depends on whether such interference is consistent with the provisions, aims and objectives of the ICCPR and reasonable in the particular circumstance.

289. The Bill proposes amendments such that a person may have their visa refused or cancelled if the Minister administering the Migration Act (or the Minister's delegate) is satisfied (subsection 501(1)) or reasonably suspects (subsections 501(2) and (3)) or is of the opinion (section 500A) that a non-citizen has, or has had, an association with an organisation and, at the time of the association, the organisation was a terrorist organisation, state sponsor of terrorism or a prohibited hate group and the association provides support to the organisation. However an association will not be within scope where it does not provide support in relation to the purposes of the organisation. This may include where the association was for the purpose of family or domestic concerns unrelated to the purposes of the organisation.

290. Article 17 of the ICCPR sets out a prohibition on arbitrary and unlawful interference with the family and Article 23 sets out an obligation about the protection of the family unit. These obligations may be engaged by the proposed amendments enlivening the visa refusal or cancellation powers under section 500A and section 501 to the extent that non-citizens may be detained or removed from Australia consequent to their visa being cancelled or refused. In some circumstances, the detention or the removal of a person from Australia may result in the separation of family members as a direct consequence of action taken by Australia. In other circumstances, separation of family members will be a consequence of the choices made by family members who continue to have a right to remain in Australia.

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291. To the extent that family members are separated as a direct consequence of action taken by the Commonwealth, it will not be an unlawful or arbitrary interference with the family or otherwise impermissibly limit Articles 17 or 23. These rights can be subject to proportionate and reasonable limitations that are aimed at legitimate objectives. In the case of these measures, these objectives include protecting the Australian community from the dangers of hatred and extremism.

292. The powers of visa refusal or cancellation relating to the character test or to the grounds for refusal or cancellation of temporary safe haven visas are discretionary (other than mandatory cancellation under the character test where, relevantly, the person must have a substantial criminal record), applied on a case-by-case basis, and subject to established legal safeguards, including access to merits review (for decisions under subsection 501(1) and subsection 501(2)) and judicial review. The requirement to consider the impact of the person's subsequent removal from Australia on their family unit, including consideration of the best interests of children, as part of a delegate's decision to refuse or cancel a visa relying on the proposed new grounds will be addressed through policy guidance. Where refusal or cancellation powers are exercised by the Minister administering the Migration Act personally, or where the Minister is considering whether to revoke that visa refusal or cancellation decision (where such power is available), information relevant to rights relating to families and children, including the impacts of consequential cancellation or refusal under section 500A, will be put to the Minister ahead of the exercise of the relevant power.

293. Where such consideration has not taken place, or where the person's family circumstances have changed since the last such consideration, there may be opportunities for that consideration to take place as part of a ministerial intervention consideration. Consideration of these issues in existing visa and ministerial intervention processes for a person who is on a removal pathway would ensure that that any interference with the family as a result of the person's removal following refusal or cancellation of a visa on the basis of a failure to pass the grounds would not be arbitrary in the individual circumstances of the case.

294. The measure extending Special Return Criterion 5001 to persons who have left Australia and whose visas have been refused under section 501 of the Migration Act also engages rights relating to families and children. Satisfaction of Special Return Criterion 5001 is required for the grant of a range of visas that permit travel or return to Australia, including many temporary and permanent visas.

295. In many cases, the impact of the person's removal from Australia on their family members, including consideration of the best interests of children, would have already been considered as part of the decision to refuse their substantive visa on character or other discretionary grounds. Where such consideration has not taken place, or the person's family circumstances have changed since the last such consideration, there may be opportunities for that consideration to take place prior to removal as part of a ministerial intervention consideration. Consideration of these issues in existing visa and ministerial intervention processes for a person who is on a removal pathway would ensure that that any interference with the family as a result of the person's subsequent removal would not be arbitrary in the individual circumstances of the case, and will allow for consideration of the best interests of the child prior to removal and the imposition of Special Return Criterion 5001.

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Right to enter one's own country in Article 12 of the ICCPR

296. Article 12(4) of the ICCPR states:

No one shall be arbitrarily deprived of the right to enter his own country.

297. In its *General Comment 27*, the UNHRC has indicated that the right of a person to enter his or her own country implies the right to remain in one's own country, as well as the right to return after having left one's own country.

298. 'Own country' in Article 12(4) is not limited to citizens of a country, but can include long term residents with strong personal and family ties to Australia and intentions to remain, as well as where ties to the country of nationality may have been severed. To the extent that the visa cancellation or refusal power under section 501 may be exercised in respect of a non-citizen whose own country is Australia, obligations under Article 12(4) may be engaged by the amendments to the character test and to Special Return Criterion 5001.

299. Restrictions on the right to enter one's own country are prohibited only if they are arbitrary. The UNHRC, in its *General Comment 27*, has said that:

The reference to the concept of arbitrariness in this context is intended to emphasize that it applies to all State action, legislative, administrative, and judicial; it guarantees that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.

300. Therefore, in order for restrictions on the right to enter, remain in and return to one's own country not to be 'arbitrary', they must be reasonable in the particular circumstances, necessary and proportionate to the achievement of a legitimate objective.

301. The requirement to consider the strength, nature and duration of the person's ties to Australia as part of a delegate's decision to refuse or cancel a visa under section 501 relying on the proposed new limb of the character test will be included in policy guidelines. Where refusal or cancellation powers under section 501 are exercised by the Minister administering the Migration Act personally, or where the Minister is considering whether to revoke that visa refusal or cancellation decision, information relevant to the right to remain in or enter into one's own country will be put to the Minister ahead of the exercise of the relevant power.

302. This will help ensure that any deprivation of a non-citizen's right to enter their own country is not arbitrary, as it was necessary, reasonable and proportionate having regard to the risk their presence in Australia posed to an individual or individuals and in order to maintain the integrity of Australia's migration program.

Right to liberty and freedom from arbitrary detention in Article 9 of the ICCPR

303. Article 9(1) of the ICCPR states:

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Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.

304. Article 9(1) requires that detention must be in accordance with procedures established under domestic law and must not otherwise be arbitrary. The UNHRC, in its *General Comment 35*, states that:

An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.

305. The proposed new grounds for visa refusal or cancellation enable the Minister administering the Migration Act (or the Minister's delegate where the power is delegable) to exercise the power under section 500A or section 501 of the Migration Act to refuse a visa application or cancel a visa if they are satisfied (subsection 501(1)) or reasonably suspect (subsections 501(2) and (3)) or are of the opinion (section 500A) that a non-citizen is or has been at any time a member of, or associated with an organisation that is or was (at the relevant time) a prohibited hate organisation or a terrorist organisation, has been involved in conduct constituting a hate crime (as defined for the purposes of the Migration Act), or has made public statements that involve the dissemination of ideas based on the superiority over or hatred of other persons on the basis of one or more prescribed characteristics that give rise to a risk of harm to the Australian community or a segment of that community, or endorsed or encouraged such statements. A consequence of the refusal of a visa application or the cancellation of a non-citizen's visa, under existing provisions of the Migration Act, would be that the non-citizen would become an 'unlawful non-citizen' liable to removal from Australia, and to immigration detention pending that removal. Under existing provisions of the Migration Act, the person would be required to remain in immigration detention until they are removed from Australia, unless there is no real prospect of their removal being practicable in the reasonably foreseeable future, or granted a visa.

306. Immigration detention of unlawful non-citizens as a consequence of visa refusal or cancellation is authorised by, and operates in accordance with, the Migration Act. Accordingly, it complies with the requirement in Article 9(1) that deprivation of liberty not occur except in accordance with grounds and procedures prescribed by law. Non-citizens are also able to challenge the lawfulness of their detention by seeking a writ of habeas corpus.

307. Whether detention is arbitrary involves consideration of whether it pursues a legitimate aim and is reasonable, necessary and proportionate in light of the circumstances. The objective of immigration detention pending an unlawful non-citizen's removal from Australia under the Migration Act is to ensure that the person is available to be removed once that removal becomes reasonably practicable. It is intended that any person who is detained as a result of having their visa refused or cancelled will be removed from Australia as expeditiously as is reasonably practicable. Detention in these circumstances is a predictable operation of law, and is necessary, reasonable and proportionate to the

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objective of removing unlawful non-citizens from Australia when they no longer have a right to remain.

308. To the extent that detention that initially complies with Article 9 may become arbitrary if it continues beyond the period for which it can be justified, the Government has processes in place to mitigate the risk of a person's immigration detention becoming prolonged or arbitrary through internal administrative review processes; Commonwealth Ombudsman enquiry processes, reporting and Parliamentary tabling; and, ultimately the use of the personal intervention powers of the Minister administering the Migration Act to grant a visa or residence determination where it is considered in the public interest.

309. Subsections 500A(12) and 500A(13) of the Migration Act provide that where a person's temporary safe haven visa is refused or cancelled under section 500A, the temporary safe haven visa of an immediate family member is also refused or cancelled. To the extent this may limit the right of a person not to be arbitrarily detained, detention is not arbitrary, and would be reasonable, necessary and proportionate in the circumstances. Immediate family members of the visa holder have their visas granted pursuant to, and conditional upon, the satisfaction of the visa criteria by the primary visa holder. If the primary visa holder's visa is cancelled, the conditions on which the family are present in Australia with the visa holder are no longer valid, and the family would be expected to depart together with the primary visa holder whose visa has been cancelled. Immediate family members whose visas are consequentially refused or cancelled would be subject to the visa application bar under section 91K of the Migration Act preventing their making an application for any visa other than a temporary safe haven visa. However, the Minister administering the Migration Act may, under section 91L of the Migration Act, determine that the section 91K bar does not apply to a non-citizen if they think that it is in the public interest to do so, with the result that the non-citizen would be eligible to apply for a bridging visa or another substantive a visa in their own right. The power of the Minister to lift the section 91K bar under section 91L is personal and non-compellable.

310. Held detention in an immigration detention centre is a last resort for the management of unlawful non-citizens, particularly individuals whose removal may not be practicable in the reasonably foreseeable future. The Minister administering the Migration Act has a personal discretionary power under the Migration Act to intervene in an individual case and grant a visa, including a bridging visa, to a person in immigration detention, if they think it is in the public interest to do so. What is and what is not in the public interest is for the Minister to decide.

311. The Minister administering the Migration Act also has a personal discretionary power to allow a detainee to reside outside of an immigration detention facility at a specified address in the community (residence determination). While a residence determination permits an individual to be placed in the community subject to certain conditions, it continues to be a detention placement.

312. The powers of the Minister administering the Migration Act to consider whether to grant a visa to permit an unlawful non-citizen's release from immigration detention, or to permit a community placement under a residence determination, until they are able to be removed from Australia, means that the person's individual circumstances, and the risk they may pose to the Australian community can be taken into account. This enables the

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least restrictive option to be implemented for the person having regard to their circumstances.

313. As a result, any period of immigration detention resulting from a visa cancellation or refusal on the basis of the proposed additional limbs of the character test or the proposed grounds for refusal or cancellation of temporary safe haven visas would be lawful and not arbitrary, and therefore consistent with the rights under Article 9.

***Non-refoulement* obligations**

314. Article 6 of the ICCPR states:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

315. Article 7 of the ICCPR states:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

316. Article 3(1) of the CAT states:

No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

317. The proposed amendments to the character test and to the grounds for refusal and cancellation of temporary safe haven visas do not affect Australia's ability to comply with its international *non-refoulement* obligations. If the person whose visa is being refused or cancelled on the basis of a failure to pass the character test, or in the Minister's opinion satisfies criteria for the refusal or cancellation of a temporary safe haven visa, makes a claim to engage Australia's *non-refoulement* obligations or it appears that they may do so, these claims could be considered as part of the decision whether to refuse or cancel the visa or to revoke visa refusal or cancellation.

318. The Migration Act specifically provides, in subsection 501E(2), that a decision to refuse or cancel a visa under section 501 on the basis that a person does not satisfy the character test does not prevent a person from making an application for a protection visa if they have not previously been refused a protection visa or had their protection visa cancelled.

319. Section 501E does not apply to a decision to refuse or cancel a visa under section 500A. A non-citizen who has a temporary safe haven visa refused under section 500A may apply for a protection visa if they have not previously had a protection visa cancelled or a protection visa application refused (subject to the operation of Subdivision AJ of Division 3 of the Migration Act and Item 1401(3)(d)(ii) of Schedule 1 of the Migration Regulations 1994).

320. In circumstances where a protection visa application may be refused as a result of the new limb of the character test, a decision-maker is required, under section 36A of Act, to consider the protection-related criteria for a protection visa before considering whether

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the visa could be refused under any other power of the Migration Act, including as a result of a failure to pass the character test.

321. If the decision-maker makes a 'protection finding' within the meaning of subsection 197C(3) of the Migration Act in the course of considering that protection visa application, removal to the country by reference to which the 'protection finding' was made is not required or authorised unless the decision in which the protection finding was made is quashed or set aside, the person requests voluntary removal or the person is found, under section 197D of the Migration Act, to no longer be a person in respect of whom a protection finding would be made in respect of the relevant country. A decision under section 197D of the Migration Act is subject to merits review and removal to the country by reference to which a 'protection finding' was made is also not authorised or required while merits review of a decision under section 197D of the Migration Act is ongoing.

322. Since a 'protection finding' reflects the circumstances in which Australia's *non-refoulement* obligations are engaged, non-citizens who have a 'protection finding' will not be removed from Australia in breach of Australia's *non-refoulement* obligations. The effect of section 36A and subsection 197C(3) of the Migration Act is that the person will be protected from removal in breach of Australia's *non-refoulement* obligations where a 'protection finding' was made in the course of considering that protection visa application, even if that application is subsequently refused.

323. Further, where the visa proposed to be cancelled is a protection visa, or the person has previously held a protection visa, removal to the country by reference to which a 'protection finding' was made in the course of considering the person's most recent protection visa application is not required or authorised unless the decision in which the protection finding was made is quashed or set aside, the person requests voluntary removal or the person is found, under section 197D of the Migration Act, to no longer be a person in respect of whom a protection finding be made in respect of the relevant country. This could be in circumstances where, for example, country conditions have significantly improved such that the person no longer faces a real risk of the relevant harm. As noted above, a decision under section 197D of the Migration Act is subject to merits review and removal to the country by reference to which a 'protection finding' was made is also not authorised or required while merits review of a decision under section 197D of the Migration Act is ongoing.

324. A non-citizen who has held a temporary safe haven visa is unable to make a valid application for a permanent protection visa. However, as noted above, claims to engage Australia's *non-refoulement* obligations could be considered as part of the decision to cancel the visa.

325. In addition, where a person has previously been refused a protection visa but makes credible new protection claims in relation to the country they have previously been assessed against and had no protection finding made, or where the person makes claims in relation to another country to which they may be removed, or where a person is unable to make a valid application for a protection visa, a range of ministerial intervention options are available to allow those claims to be considered.

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326. As such, existing provisions of the Migration Act are available to ensure that a person whose visa is refused or cancelled as a result of the proposed amendments will not be removed in breach of Australia's *non-refoulement* obligations.

Right to the presumption of innocence in Article 14 of the ICCPR

327. Article 14(2) of the ICCPR relevantly provides:

> *(2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.*

328. The amendments provide that the visa refusal and cancellation powers under section 500A and section 501 of the Migration Act can be exercised in relation to a non-citizen where the Minister administering the Migration Act (or the Minister's delegate) is satisfied (subsection 501(1)) or reasonably suspects (subsections 501(2) and (3)) or is of the opinion (section 500A) that the person has been or is involved in conduct constituting a hate crime (as defined for the purposes of the Migration Act) whether or not the person has been convicted of an offence constituted by the conduct. However, this does not contravene the right in Article 14(2) which is focused on criminal proceedings. A decision to refuse or cancel a visa, including in circumstances where a person's conduct could also result in charges being laid or a conviction, is not a criminal proceeding and is not a criminal punishment or penalty.

329. The purpose of the powers to refuse or cancel a non-citizen's visa where their presence in Australia may pose a risk to the health or safety of the Australian community, or a segment of the community, is to ensure that they can be removed from Australia.

330. This regime is not designed as a criminal proceeding or punishment. Rather, visa refusal or cancellation, and the subsequent removal of unlawful non-citizens from Australia, have a protective and not punitive purpose. The proposed amendments to visa refusal or cancellation grounds amount to an administrative consequence which can flow from conduct which could in some circumstances also be a criminal act. However this does not depend on a criminal act or charge or require the standard of proof for criminal proceedings. The regime is designed to protect the Australian community by allowing removal of the non-citizen from Australia, and not to adjudicate criminal guilt or punish that non-citizen for their conduct.

331. The measures in the amendments do not constitute criminal proceedings and therefore do not limit the right in Article 14(2).

SCHEDULE 3 – CUSTOMS AMENDMENTS

Right to freedom of expression and prohibition on the advocacy of hatred in Articles 19 and 20 of the ICCPR

332. Article 19 of the ICCPR relevantly provides that:

> *2)Everyone has the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*

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3) The exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

a) for respect of the rights or reputation of others;

b) for the protection of national security or of public order (ordre public), or of public health or morals.

333. Article 20(2) of the ICCPR requires that:

Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

334. The proposed amendments to the Prohibited Imports Regulations and the Prohibited Exports Regulations to classify violent extremist material and prohibited symbols as prohibited goods engage rights under Article 19(2) of the ICCPR by limiting an individual's ability to receive and import violent extremist material and prohibited symbols. This restriction on free expression is justified on the basis that violent extremist material and prohibited symbols cause significant harm to many Australians. Nazi symbols are widely recognised as representing and conveying ideologies or hatred, violence and racism which are incompatible with Australia's multicultural and democratic society. Similarly, violent extremists and terrorist organisations use prohibited symbols to signal their ideology to a wide-ranging audience, to recruit and inspire behaviours from like-minded individuals and to establish group belonging. The use of the Islamic State flag in the Bondi Beach terrorist attack in December 2025 demonstrates this.

335. Violent extremist and terrorist acts represent the gravest threats to the welfare of Australians as they include causing serious physical harm or death, damaging property, creating a serious risk to the health or safety of the public and interfering with electronic systems. Advocating terrorism heightens the probability of the commission of terrorism offences on Australian soil and encourages others to commit terrorist acts overseas. It is reasonable that steps should be taken to discourage activities and behaviour that promotes such conduct. This includes prohibiting the import and export of goods that are or contain violent extremist material or prohibited symbols.

336. Goods that are or contain violent extremist material or prohibited symbols may be imported or exported where written permission is granted by the responsible Minister or authorised person, or where the goods are being imported for the purpose of engaging in conduct covered by subparagraph 80.2H(9)(a)(i) or (b)(ii), or paragraph 80.2H(10)(a) to (e), of the Criminal Code. These include where the import or export is for religious, academic, educational, artistic, literary or scientific purpose or for the purposes of making a news report, or a current affairs report by a person working in a professional journalistic capacity, or legal proceedings or public duties. In considering whether to grant a permission, the responsible Minister is to have regard to, among other relevant matters, the purposes for which the goods are to be imported or exported, and the extent to which the person conducts activities of an artistic or educational, or of a cultural or scientific, nature to which the goods relate.

337. By reducing access to violent extremist material and prohibited symbols and deterring the advocacy of such acts, the proposed amendments also promote the rights of others (in

accordance with Article 19(3)(a)). In this instance, this may include protecting people's right to life under Article 6 of the ICCPR. The prohibition on the import or export of a good that is or contains violent extremist material or a prohibited symbol does not disproportionately limit freedom of expression. Accordingly, the limitation on the freedom of expression is reasonable, necessary and proportionate to achieving a legitimate policy objective and is consistent with the permissible limitations set out under Article 19(3) and supports the obligation under Article 20(2) to prohibit advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

Right to a fair trial and the presumption of innocence in Article 14 of the ICCPR

338. Article 14(2) of the ICCPR states that:

Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

339. The proposed amendment to Part 1 of Schedule 7 to the Customs Regulation 2015 (Customs Regulation) may engage Article 14(2) as it proposes to remove the commercial quantity and commercial use qualifiers for objectionable goods to be considered as a tier 1 good. Under the existing regulations, the importation or exportation of a non-commercial quantity of objectionable goods without permission is treated as a strict liability offence under section 233 of the *Customs Act 1901* (Customs Act). By removing the commercial quantity and commercial use thresholds for objectionable goods to be classified as tier 1 goods, the importation or exportation of objectionable goods in any quantity may also be subject special offences relating to tier 1 goods applicable under section 233BAA of the Customs Act. This could result in the prosecution and potential imprisonment of persons found guilty of unlawfully importing or exporting objectionable goods not currently subject to the higher maximum penalty applicable to tier 1 goods in non-commercial quantities and for non-commercial use. The maximum penalty for offences under section 233BAA is five years imprisonment, or 1000 penalty units, or both.

340. Unlike offences under section 233 which are strict liability, an offence under section 233BAA requires that a person be reckless to the fact that the goods were classified as tier 1 and the import or export of the goods was intentional. A person who may be charged with an offence against section 233BAA of the Customs Act as a tier 1 offence for unlawful objectionable goods importation or exportation will, as with other offences related to the importation or exportation of prohibited goods, be afforded due process and the opportunity to respond to evidence put forward during prosecution.

341. The intent of removing commercial quantity limits for objectionable goods as tier 1 goods is to provide the court with the discretion to impose higher penalties or a penalty of imprisonment for the most serious offending where the importation or exportation is found to be intentional and the person was reckless to the fact the goods were tier 1 goods, while retaining the lesser strict liability offence available under section 233 in situations where the mental elements cannot be proven. This discretion enhances existing deterrent measures for the unlawful importation or exportation of objectionable goods. Given the serious risk to national security and community safety from the importation of objectionable goods (which can include material advocating a terrorist act, violent extremist material, prohibited symbols, child-like sex dolls, child exploitation material,

and extreme animal abuse material) it is appropriate for the most egregious offences to be punishable by imprisonment.

342. Advancements in electronic storage have significantly altered the operating environment for objectionable goods. A single electronic device is now capable of storing thousands of images and videos, whereas prior to the amendment, the Customs Act and the Customs Regulation treated this as one good. Removing the commercial quantity threshold for objectionable goods to attract a tier 1 offence provides the court with discretion to consider the quantity of objectionable images and not just the quantity of devices the images are held on at the time of importation or exportation.

343. The strengthening of penalties is intended to:

- make appropriate sanctions available to a court for identified egregious offences;
- increase the deterrence effect of the border controls; and
- encourage voluntary compliance with border controls.

344. The increased penalty is necessary, reasonable, and proportionate to protect national security and community safety and reflects the seriousness of the offence.

SCHEDULE 4 – FIREARMS AMENDMENTS

Part 1 – National gun buyback

Right to life in Article 6 of the ICCPR

345. Article 6(1) of the ICCPR states:

> *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

346. The UNHRC in its *General Comment 36* states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

347. *General Comment 36* also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal weapons to unauthorised individuals.

348. The establishment of the national gun buyback scheme would promote the right to life by reducing the number of firearms in the community to enhance national security and community safety. The firearms covered in this measure are lethal weapons that pose a clear threat to lives, as tragically demonstrated by the antisemitic terrorist attack at Bondi Beach on 14 December 2025. The national gun buyback scheme will see a reduction of the number of dangerous firearms circulating in the community, thereby strengthening Australia's protection of the right to life.

Part 2 – Firearms background checks

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Right to work in Article 6 of the ICESCR

349. Article 6(1) of the ICESCR states:

> *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

350. The right to work does not equate to a guarantee to particular employment. As the Parliamentary Joint Committee on Human Rights notes in its Guide to Human Rights, the right to work:

> *... is not to be understood as providing an unconditional right to obtain employment or for the state to provide everyone with employment; rather it is a right to choose an occupation and engage in work. It applies to all types of work, both in the public and private sectors, and to the formal and informal labour market.*

351. The United Nations Committee on Economic Social and Cultural Rights (CESCR) recognises that the right to work in Article 6 does not equate to a guarantee of full employment. The CESCR recognises the existence of international factors beyond the control of countries, which may hinder the full enjoyment of the right to work in many countries (for example, transnational, serious and organised crime). The CESCR has stated that the right to work affirms the obligation of States parties to assure individuals their right to freely chosen or accepted work, including the right not to be deprived of work unfairly.

352. Under Article 4 of the ICESCR, the rights in Article 6 can be limited for the purposes of promoting general welfare in a democratic society. Any limitations need to be reasonable, necessary and proportionate to the legitimate objective sought to be achieved.

353. The proposed amendments to establish a new background checking framework that enables AusCheck to facilitate a firearms background check may engage the right to work, as an adverse criminal intelligence assessment furnished by the Australian Criminal Intelligence Commission (ACIC) or adverse or qualified security assessment furnished by the Australian Security Intelligence Organisation (ASIO) to AusCheck for the purposes of a background check, may result in an applicant being denied a firearms licence by a State and Territory firearms licencing authority (FLA). As a consequence, the applicant may be denied or terminated from certain jobs that require a person to hold a firearms licence, for example, as an armed security guard.

354. However, the right to work in Article 6 of the ICESCR does not guarantee that a person has a right to work in a particular industry. Acts of terrorism and serious and organised crime involving the use of firearms can result in significant loss of life, permanent and significant physical and psychological harm, and broader harms to social cohesion. Any limitation on the right to work that may arise as a result of a person being refused a firearms licence, or having such a licence cancelled or suspended, on the basis of an adverse or qualified security assessment or adverse criminal intelligence assessment is a reasonable, necessary and proportionate measure to prevent the issuing of a firearms licence to a person whose ability to possess a firearm may be prejudicial to security or may advance serious and organised crime.

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355. To the extent that the measure may limit the opportunity for an individual to gain employment of their choosing, the measure is proportionate and the least rights restrictive, as it only limits their ability to gain employment in vocations that require a firearms licence. It would not prevent the individual from gaining employment of their choosing in a vocation that does not require a firearms licence. As a mitigation for the limitation, an individual would retain the right to seek merits review of final decisions on firearms licence applications made by a State or Territory FLA, subject to the laws of the relevant jurisdiction. The applicant would also have the right to seek judicial review in accordance with subsection 75(v) of the *Constitution* or section 39B of the *Judiciary Act 1903* (Judiciary Act).

356. The proposed amendments to the *Crimes Act 1914* (Crimes Act) to permit the use and disclosure of spent, pardoned and quashed conviction information to inform:

- ASIO in the performance of its functions
- the ACIC in the performance of its criminal intelligence assessment function, and
- an intelligence or security agency in making employment-related decisions,

may engage the right to work in certain circumstances. An individual's spent, pardoned or quashed conviction information could be used to inform an adverse or qualified security assessment or an adverse criminal intelligence assessment relating to the holding of an Aviation Security Identification Card (ASIC) or a Maritime Security Identification Card (MSIC), allowing a person unescorted access to secure spaces at airports, where, for example, the individual's conviction for a terrorism or serious and organised crime offence was quashed on procedural grounds, without controverting the evidence of their conduct. As a result, an individual may be denied or terminated from certain jobs requiring the individual to hold an ASIC. Such information could also be used to inform a security or intelligence agency's decision as to whether to engage the individual to work for, or perform work for, the agency. Employment in, or engagement in any capacity, by an intelligence or security agency generally requires the highest level of trust and integrity, such that information concerning pardoned, quashed or spent convictions may appropriately be considered by such agencies when determining whether a person should be employed or otherwise engaged by the agency.

357. As noted above, the right to work in Article 6 of the ICESCR does not guarantee that a person has a right to work in a particular industry. Employment in fields for which background checks or intelligence assessments are required, such as for unescorted access to secure areas of airports and seaports, roles requiring an individual to hold a firearm, or roles requiring a security clearance including in intelligence and security agencies, is appropriately subject to more stringent controls than other fields. This reflects the highly sensitive nature of such work. Allowing spent, pardoned and quashed conviction information to be used to inform the performance of ASIO's functions, the performance of the ACIC's criminal intelligence assessment function, and employment-related decisions in intelligence and security agencies is a reasonable, necessary and proportionate measure to mitigate risks to security, and associated with serious and organised crime, arising from employment in such roles.

Right to a fair and public hearing in Article 14 of the ICCPR

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358. Article 14(1) of the ICCPR provides:

> *All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.*

359. Article 14 of the ICCPR includes protections relating to justice and ensuring a fair hearing. The right to a fair and public hearing applies to both criminal and civil proceedings, and in cases before both courts and tribunals.

360. These proposed amendments engage the right to a fair and public hearing to the extent they disapply the notice requirements and merits review mechanisms set out in Part IV of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), and Division 3 of the new Part III of the *Australian Crime Commission Act 2002* (ACC Act) in relation to firearms background checks. Under the measures, ASIO may provide an adverse or qualified security assessment, and/or the ACIC may provide an adverse criminal intelligence assessment, to AusCheck in relation to a decision by an FLA about whether to issue or revoke a firearms licence.

361. This means that if an adverse or qualified security assessment is made by ASIO against an individual to whom the background check relates, the individual will not receive a notice of this from AusCheck, nor will they have the ability to apply to the Administrative Review Tribunal (ART) for review of the assessment under section 54 of the ASIO Act. Similarly, an individual against whom an adverse criminal intelligence assessment has been made by the ACIC will not have notification or merits review rights under the ACC Act. The outcome of a background check will be provided by AusCheck to the relevant FLA responsible for firearms licensing to inform its decision, in relation to the individual who either applied for or currently holds a firearms license. The form of advice given to the FLA will be provisioned for in the AusCheck Regulations 2017 (AusCheck Regulations). Any notification to the individual about the licence decision will occur in accordance with the laws of that jurisdiction.

362. Disapplying notification requirements and merits review rights for individuals subject to an adverse or qualified security assessment or criminal intelligence assessment is a reasonable limitation on the right to a fair and public hearing. As outlined in paragraph 1 of the National Firearms Agreement, firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety. The Commonwealth background checking framework is designed to identify and provide advice to FLAs on individuals who would pose a risk to security (in particular, in relation to politically motivated violence including terrorism, or the promotion of communal violence) or the advancement of serious and organised crime, should they be granted or retain a firearms licence. The removal of notification requirements and merits review rights is appropriate in a framework where the protection of public safety and national security is of paramount importance, and where an adverse assessment would relate to a privilege, rather than an individual's rights.

363. The amendments do not displace procedural fairness obligations in relation to the person in respect of whom an adverse or qualified security assessment, or an adverse criminal intelligence assessment, has been furnished. These obligations ensure that the person may

know the case against them and may be provided with the opportunity to be heard, to the extent possible without prejudicing public safety or national security.

364. There will be additional pathways available to the applicant for review of an adverse or qualified security assessment or criminal intelligence assessment, or the decision to revoke or not issue a firearms licence. A security or criminal intelligence assessment would form an input to the ultimate decision of the relevant FLA as to whether to grant or renew a firearms licence. Subject to the laws of the relevant jurisdiction, the individual may retain the right to seek merits review of final decisions on firearms licence applications made by an FLA. In jurisdictions that do not provide for external merits review of firearms licensing authorities, it would be incongruous for merits review to be available in relation to a security or criminal intelligence assessment that forms a single input to the ultimate firearms licensing decision. An affected individual will also retain the ability to seek judicial review of the assessment in accordance with subsection 75(v) of the *Constitution* or section 39B of the Judiciary Act.

365. The consequential amendments in Division 3, Part 2 of Schedule 4 to the *Administrative Decisions (Judicial Review) Act 1977* and the *Administrative Review Tribunal Act 2024* in this Bill would also engage this right, as they will replace references in these Acts to the ACIC's current criminal intelligence functions under Part II Division 2A of the ACC Act with references to the new criminal intelligence assessment framework in Part III. Criminal intelligence assessments are generally exempt from these Acts or have limitations on disclosure of the information surrounding them during administrative review processes. Strengthening the criminal intelligence assessment framework to include AusCheck background checks for firearms related purposes means these criminal intelligence assessments are unable to be disclosed in these processes. However, these measures are necessary and proportionate in ensuring the legitimate aim that information that is potentially prejudicial to the safety and security of the Commonwealth is not disclosed.

366. Amendments in Division 3, Part 2 of Schedule 4 to the *Surveillance Devices Act 2004* (SD Act) and *Telecommunications (Interception and Access) Act 1979* (TIA Act) will clarify the ability of the ACIC and ASIO to disclose information for the purposes of merits and judicial review, if required as part of a proceeding relating to a criminal intelligence assessment or security assessment. The purpose of these amendments is to ensure that Commonwealth agencies can meet their disclosure obligations, in line with the proper administration of justice and to promote an individual's right to a fair hearing.

Right to privacy in Article 17 of the ICCPR

367. Article 17(1) of the ICCPR states:

> *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

368. Pursuant to Article 17(1) of the ICCPR, an interference with an individual's privacy must have a lawful basis and not be arbitrary. The right to privacy may be subject to permissible limitations. In order for an interference with the right to privacy to be

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permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances.

369. The UNHRC has interpreted the requirement of 'reasonableness' such that any interference with privacy is proportional to the end sought and be necessary in the circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity. In essence, this will require that limitations:

- serve a legitimate objective,
- adopt a means that is rationally connected to that objective, and
- the means adopted are not more restrictive than they need to be to achieve that objective.

370. In enabling the ACIC and ASIO to conduct criminal intelligence assessments and security assessments, respectively, for the purpose of informing AusCheck firearm background checks, the proposed measures engage the right to privacy under Article 17 of the ICCPR.

371. The ACIC and ASIO may lawfully collect personal information about an individual, with or without the individual's consent, as part of their statutory functions. Consent for the AusCheck firearms background check will be obtained by the FLA at the time of the licence application. For ad hoc checks initiated by law enforcement or national security agencies, consent is not required as the check would be authorised by law.

372. The amendments would enable regulations to prescribe the information required for a firearms background check. Any collection and use of personal information would be subject to safeguards under the AusCheck Act and the Privacy Act. The amendments would confirm that only information relating to the individual who is or has been subject to a firearms background check is retained in the AusCheck database.

373. Firearms licence applications are voluntary, and individuals consent to application criteria and processes set out in legislation when lodging an application. The amendments would enable AusCheck to facilitate firearms background checks, which may include security assessments from ASIO and criminal intelligence assessments from the ACIC, and share the outcome of a background check with the relevant FLA. To the extent the proposed amendments may limit a person's right to privacy, these measures aim to prevent individuals who pose a serious risk, such as involvement in terrorism or serious and organised crime, from accessing firearms, ensuring that any collection and use of personal information is lawful and proportionate to the objective of protecting public safety and national security.

374. All personal information, of the individual to whom the background check relates, collected through the AusCheck firearm background check process will be 'AusCheck scheme personal information' (as defined in subsection 4(1) of the AusCheck Act 2007 (AusCheck Act)) providing a safeguard for information collected for background checking purposes. The use and disclosure of AusCheck scheme personal information is subject to stringent safeguards under sections 13, 14 and 15 of the AusCheck Act. Appropriate safeguards for personal information collected for the purposes of a firearms background check will also be provided through the Privacy Act. All personal

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information collected and held by the government must adhere to the Australian Privacy Principles (APPs) as set out under the Privacy Act. Failure to comply with privacy obligations can have serious legal, financial and reputational consequence.

375. The amendments would include provisions for consent requirements to be embedded in the AusCheck Regulations. Individuals would consent to a firearms background check when applying for a licence, and the amendments would provide for deemed consent where a person already holds a firearms licence. This measure provides a safeguard on any limitation to the right to privacy by ensuring that there is full and express consent to the handling of personal information as part of the firearms background check. In practice, when an individual provides consent for a firearms background check for themselves, they will be required to consent to the information handling process as outlined within a Privacy Notice. The Privacy Notice will outline the information handling processes for both the firearms background check and disclosure of the information collected for the purposes of the firearms background check.

376. The AusCheck Regulations may provision for the information required in an application, any information not relating to the individual who is or has been subject to a firearms background check would be collected indirectly through the licence application, such information would be excluded from retention by AusCheck under proposed amended sections 13 and 14 of the AusCheck Act. Under these amendments, AusCheck would not incorporate information other than that relating to the individual who is or has been subject to a firearms background check in its own records or databases, and such information would not be able to be assessed or disclosed for any other purpose. All handling is governed by safeguards outlined in the AusCheck Act and the Privacy Act, as highlighted above, including compliance with the APPs. These controls ensure that collection and disclosure of information, other than the information of the individual who is or has been subject to a firearms background check, is lawful and limited to what is necessary and proportionate to the legitimate objective of preventing firearms access by individuals who pose a security or serious criminal risk to national security.

377. In the initial stages of implementation, there may be scenarios where a check is initiated on a current licence holder by either a national security agency, or a law enforcement agency and the individual to whom the background check relates has not previously been subject to an AusCheck background check through the application process. The individual to whom the background check relates is taken to have consented to the background check by holding the licence. For the purposes of information gathering, AusCheck will provide information (if any) that is on hand about an applicant to ASIO and the ACIC, but will not request additional information not held in the AusCheck database. Where required, ASIO and the ACIC will use lawful means to obtain the necessary information about the individual to whom the background check relates.

378. For own-motion checks initiated by a national security agency or law enforcement agency, regardless if an individual has provided consent for a background check previously or not, consent is deemed as a condition of holding the licence. The Privacy Notice provided to licence holders and applicants will cover this deeming provision and be available on accessible platforms as well as given at the time of application or renewal.

379. To the extent that deemed consent for background checks initiated by law enforcement or national security agencies may limit the right to privacy under Article 17 of the

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ICCPR, this limitation is reasonable, necessary, and proportionate to the legitimate objective of protecting public safety and national security. It applies only in circumstances where an individual already holds a firearms licence—a voluntary status that carries inherent obligations under state and territory legislation—and is subject to statutory safeguards. The measure adopts the least rights-restrictive approach by relying on existing information held by AusCheck (or an FLA where required) and lawful means by ASIO and the ACIC, without requiring additional intrusive data collection. These controls ensure interference with privacy is lawful, targeted and not arbitrary.

380. The consequential amendments to the ABF Act, Crimes Act, SD Act and the TIA Act in Division 3, Part 2 in Schedule 4 of the Bill would expand the ACIC's ability to consider and use sensitive information and documents, which may include personal information, when making a criminal intelligence assessment. This would include existing information in the ACIC's holdings, information disclosed under the SD Act and TIA Act by Commonwealth, State and Territory agencies for the purpose of the ACIC making a criminal intelligence assessment, and telecommunications data disclosed under the TIA Act for the purpose of making a criminal intelligence assessment. Currently, the ACIC is unable to use existing information in its holdings to support a reliable criminal intelligence assessment for the purpose of a firearms background check. This is due to different information sharing rules depending on how the information was obtained. Commonwealth, State and Territory agencies are also unable to disclose information to the ACIC if it is for the purpose of making a criminal intelligence assessment. Access to this information is necessary to protect public safety by preventing individuals involved in serious and organised crime from accessing firearms. As far as the consequential amendments may limit the right to privacy, any limitation is therefore lawful and not arbitrary.

381. The consequential amendments to Chapter 4 of the TIA Act would enable the ACIC to authorise the disclosure of telecommunications data for the purposes of its criminal intelligence assessment function. Telecommunications data may consist of personal information, including subscriber and account records such as the name, address and contact details for a person, as well as records of the time, date, duration of, and parties to communications made using a particular service, and the approximate location of a communications device. Information obtained by the ACIC using these powers may consist of personal information. Limitations on the right to privacy through obtaining information through covert investigative powers would be necessary to enable the ACIC to conduct a criminal intelligence assessment, including to resolve basic intelligence questions such as determining the identity of persons relevant to the assessment, and the nature and extent of associations between persons relevant to the assessment. The ability to covertly obtain such information ensures the ACIC can detect and explore potential serious and organised criminal associations that an applicant may seek to conceal. Enabling the ACIC to detect and explore such associations would be critical for making an informed criminal intelligence assessment, directed at preventing the advancement of serious and organised crime in sensitive contexts, including firearms licensing, and unsupervised access to secure areas of airports, seaports and offshore oil and gas facilities.

382. The power to authorise the disclosure of telecommunications data would continue to be restricted to authorised officers of the ACIC, being officers holding a management office or position in the ACIC that have been authorised in writing by the CEO of the ACIC for

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this purpose. Section 180F of the TIA Act would continue to require authorised officers to be satisfied on reasonable grounds that any interference with the privacy of any person or persons that may result from the disclosure or use is justifiable and proportionate, having regard to the gravity of any conduct to which the authorisation is sought, the likely relevance and usefulness of the information or documents, and the reason why the disclosure is proposed to be authorised. The ACIC's access to telecommunications data for the purposes of a criminal intelligence assessment would be subject to independent oversight by the Commonwealth Ombudsman or, following the commencement of Schedule 1 of the *Strengthening the Oversight of the National Intelligence Community Act 2025*, the Inspector-General of Intelligence and Security. The Ombudsman and Inspector-General would each be entitled to full and free access to the records of the ACIC when inspecting the ACIC's use of these powers, and each possess coercive information gathering powers when investigating the ACIC's use of these powers. The ACIC's access to telecommunications data for the purposes of conducting criminal intelligence assessments would be lawful and not arbitrary.

The right to life in Article 6 of the ICCPR

383. Article 6(1) of the ICCPR states:

> *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

384. The UNHRC in its *General Comment 36* states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

385. *General Comment 36* also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal weapons to unauthorised individuals.

386. The amendments establishing a firearms background checks regime promote the right to life by ensuring that AusCheck and other entities will be able to provide relevant advice to FLAs to ensure that people who may be prejudicial to security or may advance serious and organised crime are not able to access firearms. The scheme is designed to prevent the proliferation of potentially lethal weapons to unauthorised individuals by enabling AusCheck to coordinate security and criminal intelligence assessments and provide advice to FLAs.

387. Enabling the use of Commonwealth intelligence in licencing decisions, reduces the likelihood that firearms will be used in connection with terrorism, serious and organised crime, or other activities prejudicial to security. By targeting high-risk individuals through a proportionate and least rights-restrictive approach, the measure supports obligations under Article 6 of the ICCPR to protect life from reasonably foreseeable threats.

<u>Transmission of firearms information and other information to ACIC</u>

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Right to freedom of expression and prohibition on the advocacy of hatred in Article 17 of the ICCPR

388. Article 17 of the ICCPR states:

> *No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*

389. Pursuant to Article 17(1) of the ICCPR, an interference with an individual's privacy must have a lawful basis and not be arbitrary.

390. The right to privacy may be subject to permissible limitations. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UNHRC has interpreted the requirement of 'reasonableness' such that any interference with privacy is proportional to the end sought and be necessary in the circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity. In essence, this will require that limitations:

- Serve a legitimate objective; and
- Adopt a means that is rationally connected to that objective; and
- The means adopted are not more restrictive than they need to be to achieve that objective.

391. The proposed amendments to the Customs Act to allow for the transmission and disclosure of firearms information and other prescribed information to the ACIC may engage the right to privacy.

392. Firearms information is defined and includes information relating to firearms, or to other goods relevant to firearms including firearms frames, firearms receivers and firearms sound suppressors. That information may include information relating to the import or export of the firearms or other goods, information relating to licences or permits, and personal information in relation to one or more persons. Other information may be prescribed and could include items such as seizure information of other restricted goods at the border under the Customs Act or details of illicit activity identified by Department of Home Affairs and ABF officers in the course of their duties.

393. The Department of Home Affairs currently collects information on the import and export of goods under the Customs Act, including personal information. Certain information, being firearms information and other prescribed information, is required to be disclosed to other Commonwealth and State and Territory agencies. This will occur through the National Firearms Register.

394. The amendments do not expand the types of personal information that can be collected or the circumstances in which it may be collected. Personal information held by the Department of Home Affairs may be Immigration and Border Protection (IBP) information, which is subject to strict information sharing limitations under the ABF Act.

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This information can also include personal information governed by the Privacy Act. All personal information collected and held by the government must adhere to the APPs as set out under the Privacy Act. Failure to comply with privacy obligations can have serious legal, financial and reputational consequence.

395. These controls ensure that collection, transmission and disclosure of personal information is lawful and limited to what is necessary and proportionate to the legitimate objective of regulating firearms and goods relating to firearms within the Australian community, supporting community safety and improving law enforcement capability.

396. To the extent that the proposed amendments to transmit firearms information and other prescribed information may limit the right to interfere with an individual's privacy under Article 17(1) of the ICCPR, they are reasonable, necessary and proportionate to achieving the legitimate policy objective of protecting the Australian community.

Public safety tests for firearms and weapons

Right to life in Article 6 of the ICCPR

397. Article 6(1) of the ICCPR states that:

> *Every human being has the inherent right to life. The rights shall be protected by law. No one shall be arbitrarily deprived of his life.*

398. The UNHRC in its *General Comment 36* states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

399. *General Comment 36* also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal weapons to unauthorised individuals.

400. The proposed introduction of the discretionary public safety test to the Prohibited Imports Regulations also promotes the right to life under Article 6(1) of the ICCPR.

401. The public safety test for firearms grants the Minister administering the Prohibited Imports Regulations (or the Minister's delegate) power to refuse import permission where the importation of the firearm poses a risk to the health, safety or security of the public or a segment of the public (including emergency services personnel). It is intended to capture scenarios where there are not explicit grounds upon which to refuse import permit applications where the granting of those applications may compromise public safety despite the import otherwise meeting the requirements under the import test in the application (e.g. business activities) and meeting all current legislative requirements. The right to life under Article 6(1) of the ICCPR would be promoted where firearms are prevented from being imported due to concerns around public safety.

402. The public safety test for example, would allow for import permission to be refused where there is evidence of particular firearms that have failed catastrophically due to manufacturing issues or design defects, resulting in injuries and even explosions of the barrel or frame. Additionally, emerging firearms technology is driven by demands for

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increased lethality, precision, safety, and adaptability, with the most significant innovations appearing in military applications and gradually influencing civilian technology. Military and commercial drones have been, and are being, equipped with firearms, a development that is a significant part of modern warfare and security technology, however is not explicitly addressed by the Prohibited Import Regulations. The endangerment to the lives of individuals is a reasonably foreseeable threat posed by the presence of firearms such as these in the community, and such situations are where this power would be enlivened.

403. Similarly, proposed amendments introducing a discretionary public safety test for weapons under the Prohibited Imports Regulations also promote the right to life under Article 6(1) of the ICCPR. The public safety test for weapons will apply, for example, to the importation of fully autonomous weapons and firearms that are capable of posing significant harm to the community. The endangerment to the lives of individuals is a reasonably foreseeable threat posed by the presence of certain weapons in the community, and such situations are where this power would be enlivened.

404. Preventing the importation of firearms, and weapons where it is determined public safety may be endangered would protect individuals from both accidental harm and intentional misuse of these goods. Due to the high-risk character of firearms and certain weapons this can involve risk of serious injury or death. Giving the Minister administering the Prohibited Imports Regulations the power to refuse import permission is reasonable and proportionate in relation to the dangers posed by unsafe firearms and certain weapons in the community, and the potential significant detrimental impact on human lives. These powers promote the right to life by reducing the likelihood that situations where accidental or intentional misuse of firearms and certain weapons endangering human lives can occur.

Importation of firearms

Right to equality in Article 2 and Article 26 of the ICCPR

405. Article 2(1) of the ICCPR states:

> *Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

406. Article 2(1) of ICCPR requires that Australia ensure the rights recognised in the ICCPR extend to all individuals (citizens, residents and non-citizens) within its territory and subject to its jurisdiction.

407. Article 26 of the ICCPR provides that:

> *All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

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408. Article 26 requires that all persons are to be treated equally before the law and no law shall discriminate any of the grounds listed in the Article. The UNHRC in its *General Comment 18* explains that the term 'discrimination' as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference on grounds such as nationality or other status.

409. Article 2(2) of the ICESCR provides that:

> *The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

410. However, in its General Comment 18, the UNHRC stated that:

> *The Committee observes that not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose which is legitimate under the Covenant.*

411. Similarly, in its General Comment on Article 2 of the ICESCR, CESCR has stated that:

> *Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realized and the measures or omissions and their effects*.

412. The proposed amendments to the specified persons test (Item 3.2 of Part 1 of Schedule 6) and the police certification test (Item 4.1, 4.2, 4.4 and 4.5 of Part 5 of Schedule 6) of the Prohibited Imports Regulations engages the right to equality and non-discrimination due to differential treatment based on citizenship.

413. To the extent that proof of Australian citizenship is required to meet the specified person test for firearms and related goods may limit the right to equality and discrimination on the basis of citizenship status is reasonable and proportionate to meeting the legitimate objective of protection the Australian community.

414. Consistent with the National Firearms Agreement, the possession and use of a firearm is a privilege that is conditional on the overriding need to ensure public safety. Applying the Australian citizenship requirement provides an additional layer of community protection to complement the fit and proper purposes test for firearms licences conducted by FLAs. This measure aims to reduce the risk of further gun violence in Australia and ensure the importation of firearms is reasonable, controlled and for approved purposes.

Right to Life in Article 6 of the ICCPR

415. Article 6(1) of the ICCPR states that:

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Every human being has the inherent right to life. The rights shall be protected by law. No one shall be arbitrarily deprived of his life.

416. The UNHRC in its General Comment 36 states that the right to life includes an obligation on States parties to respect and ensure the right to life, and to give effect to it through legislative and other measures.

417. General Comment 36 also provides that the State's duty to protect life includes an obligation for States parties to adopt any appropriate laws or other measures in order to protect life from all reasonably foreseeable threats, including taking steps to reduce the proliferation of potentially lethal firearms to unauthorised individuals.

418. Proposed amendments to subregulations 2(1) and 4F(4) of and Schedule 6 to the Prohibited Imports Regulations increase import controls on assisted repeating action and straight pull repeating action firearms and promote the right to life under Article 6(1) of the ICCPR, as they lower the risk and potential harm to life posed by such devices by limiting their availability to the Australian community. Assisted repeating action and straight pull repeating action firearms pose a significant risk to the community as they can operate at a higher rate of fire than traditional repeating action firearms however, they are not subject to a higher control. These changes bring import controls for assisted repeating action and straight pull repeating action firearm in line with semi-automatic firearms.

419. Proposed amendments to Schedule 6 seek to elevate import controls on firearms that utilise belt feeding mechanisms to the highest level of controls and require Commonwealth import permission. Import controls on detachable firearm magazines that have a capacity of more than 30 rounds are also proposed to be increased. These amendments similarly promote to the right to life under Article 6(1) of the ICCPR as high-capacity magazines and firearms that can operate via belt feeding can hold very large quantities of ammunition and exacerbate the risk to the community when accidents or intentional misuse occur. There are no genuine reasons as to why belt fed firearms should be accessible outside of official or specified purposes. Magazines with a capacity greater than 30 rounds are only necessary for limited purposes such as law enforcement, and should not be readily accessible where they do not meet the official purposes test, the specified purposes test, the specified person test or the returned goods test. Similarly speed loaders are likely to have law enforcement, defence and other occupational applications. Restricting these items to certain permissible uses will limit the availability of these items which may improve the ease with which a firearm or magazine can be reloaded and prevent additional harms.

420. Proposed amendments to Schedule 6 imposing additional identification requirements (e.g. unique serial numbers) for a variety of firearms related goods such as frames and receivers and firearm sound suppressors also promote the right to life under Article 6(1) of the ICCPR. These measures reduce risk to the community by increasing ownership accountability and enabling the tracking of these items in the community. The requirement for a unique serial number for firearms related goods increases the ability for law enforcement to identify, trace and assign ownership of these goods and enable their tracking in the NFR upon identification and verification at import.

421. Proposed amendments to Schedule 6 imposing controls on gel ball blasters as firearms also promote the right to life under Article 6(1) of the ICCPR. These amendments recognise gel ball blasters as firearms and subject them to the same serial number

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requirements and safety testing as other firearms to reduce the risk to the community and enabling the tracking of these goods. The amendments also seek to impose appearance-based controls on these goods in line with other firearms used for similar purposes (i.e. paintball markers). Controls on gel ball blasters further promote the right to life as these goods are increasingly being manufactured to resemble conventional, military and fully automatic firearms which can be used for intimidation in criminal activities as well as having the ability to converted into fully functional firearms capable of firing ammunition other than gel ball blasters and are being exploited by criminal actors. Police have shot several people brandishing gel ball blasters in incidents across Australia, primarily because the toy guns look identical to real firearms, making it nearly impossible for officers to distinguish them in high-stress situations. Law enforcement personnel always treat a perceived firearm threat as real until it can be proven otherwise, leading to serious, and sometimes fatal, consequences.

422. Similarly, the right to life under Article 6(1) of the ICCPR is also promoted by proposed amendments replacing the "Dealer test-category H article" with a new "Handgun test" to increase import controls on handguns by requiring Commonwealth import permissions. Under the current legislative framework, import permissions for handguns are managed at the State and Territory level. Inconsistencies that arise from having the importation of handguns managed at a State and Territory level and through police certification can be removed by introducing consistent national requirements. Handguns are primarily used by law enforcement officials, security personnel, and sports shooters, however due to their concealable and portable nature handguns are a desirable commodity amongst criminal groups. These amendments promote the right to life by tightening import controls and reducing access to these firearms which minimises the potential harm caused by the misuse of handguns.

423. The various proposed amendments increasing import controls, identification requirements and Commonwealth import permission requirements give effect to Australia's duty to enact appropriate and adequate legislative measures to protect the right to life under Article 6, primarily though reducing the proliferation of lethal firearms to unauthorised individuals and bad faith actors and, where appropriate, limiting the potential harm to the community by targeting and regulating the highest risk firearms and parts.

<u>New offences relating to firearms and explosives manufacture material</u>

Right to freedom from arbitrary detention in Article 9 of the ICCPR

424. The right to liberty in Article 9 of the ICCPR requires that persons not be subject to arrest and detention except as provided for by law and provides that neither the arrest nor the detention is arbitrary. The right applies to all forms of detention where a person is deprived of their liberty.

425. Articles 6 of the ICCPR would be engaged by the amendments in this Bill that would introduce new offences criminalising the use of a carriage service for firearms and explosives manufacture material. The new offences may engage a defendant's right to liberty as it would impose a penalty of imprisonment. However, the new offences do not represent an infringement on the right to liberty and freedom from arbitrary arrest and detention.

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426. Limitations on the right to liberty are permissible if they are in accordance with procedure established by law, and if the limitation is reasonable, necessary and proportionate. While it may have the effect putting an offender in custody, the grounds for this are prescribed by law, and only take effect following valid and lawful arrest and/or conviction for the criminal offence.

Right to the presumption of innocence in Article 14 of the ICCPR

427. The right to the presumption of innocence in Article 14 of the ICCPR provides that, in the determination of any criminal charge against a person, that person shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. Article 14(2) of the ICCPR provides that those charged with criminal offences have the right to be presumed innocent until proven guilty according to law. This is a fundamental principle of common law. The presumption of innocence imposes on the prosecution the burden of proving the charge and guarantees that no guilt can be presumed until the charge has been proven beyond a reasonable doubt.

428. Article 14 of the ICCPR would be engaged by the amendments in this Bill that would introduce new offences relating to firearms and explosives manufacture material. The new offence for possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service would engage Article 14(2) as it would provide that if the prosecution proves three of the four elements of the offence beyond reasonable doubt, it is presumed that the final element of the offence is made out unless the defendant proves otherwise. Specifically, subsection 474.45H(5) would provide that it is presumed, unless the defendant proves to the contrary, that the defendant obtained or accessed the material and used a carriage service to do so.

429. This presumption only applies where the prosecution has proven beyond a reasonable doubt that the person has possession or control of the material, the material is in the form of data held in a computer or contained in a data storage device, and the material is firearms and explosives manufacture material. Consistent with the Guide, the burden of proof on the defendant in these circumstances would be an evidential burden, requiring the defendant to adduce or point to evidence that suggests a reasonable possibility that they did not obtain or access the material using a carriage service.

430. The purpose of this presumption would be to address problems encountered by law enforcement agencies in proving beyond reasonable doubt that a carriage service was used to engage in the relevant criminal conduct. This evidence may be very technical. It can also be circumstantial, including for example that the defendant's computer had material saved on the hard drive, the computer was connected to the internet, and records show the computer accessed websites that suggest an association with the material saved on the hard drive. Accordingly, to the extent that this measure limits the right to the presumption of innocence, this is a permissible limitation.

431. Further, the offence in new subsection 474.45H(5) would rely on the Commonwealth's telecommunications power under paragraph 51(v) of the Australian Constitution. Therefore, the requirement in the offence that the relevant criminal conduct be engaged in using a carriage service would be a jurisdictional requirement. A jurisdictional element of the offence is an element that does not relate to the substance of the offence or the defendant's culpability but marks a jurisdictional boundary between matters that fall within the legislative power of the Commonwealth and those that do not.

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432. There would be a number of circumstances in which the offences in new sections 474.45G and 474.45H would not apply as the use of the firearms and explosives manufacture material would be legitimate and not contrary to the public interest. The amendments in the Bill would provide these exceptions in the form of defences under new section 474.45J, and the defendant would bear the evidential or legal burden in relation to these defences. In accordance with the Guide, this is reasonable and appropriate as the information required to prove the existence of one of the prescribed defences would be peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. To the extent that placing the onus on the defendant to prove the matters listed in the defence provisions limits the presumption of innocence, it is reasonable and appropriate.

Right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the ICCPR

433. The right to protection against arbitrary and unlawful interferences with privacy in Article 17 of the ICCPR prohibits unlawful or arbitrary interference with a person's privacy, family, home and correspondence, and prohibits unlawful attacks on a person's reputation. The United Nations Human Rights Committee (UNHRC) has interpreted the right to privacy as comprising freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy.

Protection against exploitation, violence and abuse in Article 20 of the ICCPR; Right to equality before the law in Article 26 of the ICCPR; Condemnation of propaganda and organisations that attempt to justify discrimination or are based on racial supremacism in Article 4 of the CERD.

434. The protection against exploitation, violence and abuse in Article 20 of the ICCPR requires that countries outlaw the vilification of persons on national, racial or religious grounds amounting to incitement of discrimination, hostility or violence.

435. Australia has made a reservation in relation to Article 20 to the effect that the Commonwealth and the states had legislated with respect to the subject matter of Article 20, in matters of practical concern in the interest of public order, and that it therefore wished to reserve the right not to introduce further legislation on these matters. The proposed legislation would further support compliance with Article 20 of the ICCPR by criminalising certain forms of national, racial or religious hatred. The UNHRC has affirmed (and Australia has agreed) that the prohibitions required by Article 20 of the ICCPR are compatible with the right of freedom of expression, enshrined in Article 19 of the ICCPR.

436. The right to equality before the law in Article 26 of the ICCPR provides that the law should prohibit any discrimination, and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

437. The requirement to condemn propaganda and organisations that attempt to justify discrimination or are based on racial supremacism in Article 4 of the CERD requires

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countries to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, racial discrimination. Article 4(a) provides for the criminalisation of all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any racial or ethnic groups.

438. Australia has made reservation in relation to Article 4(a) on the basis that it was not in a position to specifically treat as offences all the matters covered by the article at the time of ratification. The proposed legislation would promote the intent of the CERD to eliminate all forms of racial discrimination and incitement to discrimination.

Right to freedom of expression in Article 19 of the ICCPR; Right to enjoy and benefit from culture in Article 27 of the ICCPR; Right to take part in cultural life in Article 15 of the ICESCR

439. Article 19(1) of the ICCPR establishes the 'right to hold opinions without interference'. This right cannot be subject to any exception or restriction, except as specified under Article 4, 'in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed'. Such exceptions or restrictions are subject to limitations specified in Article 4.

440. Article 19(2) of the ICCPR provides that all individuals have the right to freedom of expression. This right includes the freedom to seek, receive and impart information and ideas of all kinds, through any media of a person's choice. Article 19(3) provides that the right to freedom of expression may be subject to limitation for specified purposes, including the respect for the rights or reputations of others where such limitation is provided by law and are reasonable, necessary and proportionate to a legitimate objective. The requirement of necessity implies that any restriction must be proportionate in severity and intensity to the purpose sought to be achieved.

441. The right to enjoy and benefit from culture in Article 27 of the ICCPR protects the rights of individuals belonging to ethnic, religious and linguistic minorities within a country to enjoy their own culture, practice their own religion and use their own language.

442. Articles 15(1)(a) and 15(1)(b) of the ICESCR protect the right of all persons to take part in cultural life and enjoy the benefits of scientific process and its applications. Article 15(1)(c) protects the moral and material interests of the authors of scientific, literary or artistic productions.

443. Articles 19 and 27 of the ICCPR, and Article 15 of the ICESCR, would be engaged by amendments in this Bill that would introduce new offences for using a carriage service for firearms and explosives manufacture material, and for possessing or controlling firearms and explosives manufacture material that has been obtained or accessed using a carriage service.

444. The offences would restrict a person's ability to use a carriage service to seek, receive and communicate firearms and explosives manufacture material. The measures are necessary and reasonable to achieve the legitimate objective of preventing the use of material to support illicit manufacture and modification of firearms and explosives.

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445. The offences would include express defences at section 474.45J, to ensure the offences do not apply in certain circumstances, including where the conduct is necessary to enforce or investigate compliance with the law; relates to licensed businesses operating in compliance with state or territory permits; is for scientific, academic or historical research; or is connected to the performance of official duties. These defences would ensure that the limitations which the offences place on the right to freedom of expression are proportionate.

446. The defendant would bear the evidential burden in relation to these defences. In accordance with the Guide, this is reasonable and appropriate as the information required to prove the existence of one of the prescribed defences would be peculiarly within the knowledge of the defendant and not necessarily available to the prosecution.

SCHEDULE 5 – TRANISITIONAL RULES

447. The transitional rules under Schedule 5 ensure that the transition from the previous law to current law do not interrupt any continuing operations. They grant the Minister administering the *Australian Federal Police Act 1979*, or the Minister administering the *Administrative Review Tribunal Act 2024* powers to, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to any amendments or repeals that may come after the Bill.

448. These transitional rules provide that the relevant Minister may not create an offence or civil penalty, or provide powers of arrest or detention, or entry, search, or seizure. By limiting any rule-making power to procedural matters, and removing the possibility of creating new offences, penalties, or coercive powers, the transitional rules is consistent with human rights obligations, and positively engages certain rights in the ICCPR, including:

- right to life and security of the person in Articles 6 and 9,
- non-refoulement obligations arising in respect of Articles 6 and 7
- right to freedom from arbitrary detention in Article 9
- right to freedom of movement under in Article 12
- right to a fair trial and right to the presumption of innocence in Article 14
- right to be equal before the law and without discrimination to the equal protection of the law in Articles 2 and 26.

449. For example, the transitional rules positively engage the right to freedom from arbitrary detention. These provide that the relevant Minister may not create an offence or civil penalty, or provide powers of arrest or detention, or entry, search or seizure, and therefore, does not constitute an infringement of the right in Article 9 of the ICCPR.

450. The transitional rules also positively engage the right to a fair trial, by ensuring that if any potential proceedings that are continuing during the transition of legislation will not be prejudiced by the introduction of the Bill.

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451. The transitional rules provide that subsection 12(2) of the *Legislation Act 2003* does not apply in relation to rules made before the end of the period of 12 months starting on the day this item commences. This means that any rules made within this period that could impose liabilities on a person in respect of anything done or omitted to be done before the instrument is registered or otherwise would affect their rights so as to disadvantage them, if it commences before the instrument's registration, would be valid. Because of this, the transitional rules may compromise the right to legality in Article 15.

452. This potential compromise is necessary and appropriate as the relevant instruments are purely administrative in nature, and the requirement for their application retrospectively may be necessary to support any administrative transitions. It is also controlled by the 12-month time restriction, and the restrictions placed on what rules can be made so that any instruments could not impose liabilities or compromise the rights of any persons.

CONCLUSION

453. The Bill promotes a number of human rights. To the extent that the Bill limits other rights, those limitations are reasonable, necessary and proportionate in achieving a legitimate aim.

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NOTES ON CLAUSES

Preliminary

Clause 1 – Short title

1. This clause provides for the short title of the Act to be the *Combatting Antisemitism, Hate and Extremism Act 2026*.

Clause 2 – Commencement

2. This clause provides for the commencement of each provision in the Bill, as set out in the table. Item 1 in the table provides that sections 1 and 3, which concern the formal aspects of the Bill, as well as anything in the Bill not elsewhere covered by the table, will commence on the day on which the Bill receives Royal Assent.

3. Item 2 in the tables provides that Schedules 1 to 3 of the Bill would commence the day after the Bill receives Royal Assent.

4. Item 3 in the table provides that Parts 1 to 6 of Schedule 4 of the Bill would commence the day after the Bill receives Royal Assent.

5. Item 4 in the table provides that Part 7 of Schedule 4 of the Bill would commence on the 28th day after this Act receives the Royal Assent.

6. Item 4 in the table provides that Part 8 of Schedule 4 of the Bill would commence on the day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.

7. Item 6 of the table provides that Schedule 5 of the Bill would commence the day after the Bill receives Royal Assent.

Clause 3 – Schedules

8. This clause provides that legislation specified in a Schedule to the Bill would be amended as set out in the applicable items in the relevant Schedule. Any other item in a Schedule to the Bill would have effect according to its terms.

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SCHEDULE 1 – AMENDMENTS OF LEGISLATION RELATING TO THE CRIMINAL LAW

Part 1 – Aggravated offences for preachers and leaders

Criminal Code Act 1995

Item 1 Subsection 80.2BA(1) of the *Criminal Code* (penalty and note)

9. Item 1 would repeal the current penalty and note under subsection 80.2BA(1) of the Criminal Code and substitute it with a new penalty and explanatory notes. Subsection 80.2BA(1) provides an offence for threatening force or violence against groups distinguished by certain attributes where that threat, if carried out, would threaten the peace, order and good government of the Commonwealth.

10. Note 1 at the end of subsection 80.2BA(1) would direct readers to section 5.2 of the Criminal Code which contains a definition of 'intention'. This would reflect that the fault element attached to paragraph 80.2BA(1)(a) is intention, as defined in section 5.2 of the Criminal Code. The Bill does not amend this fault element, but simply renumbers the note to accommodate the second additional note.

11. Note 2 after subsection 80.2BA(1) would signpost the new aggravated offence for religious officials or other spiritual leaders etc. at new section 80.2DA.

12. The maximum penalty for the offence in subsection 80.2BA(1) would be increased from 7 years imprisonment to 10 years imprisonment. The increased penalty to the offence of threatening force or violence against groups where this threat, if carried out, would threaten the peace, order and good Government of the Commonwealth would recognise that this type of conduct is a serious, intentional act that would directly threaten Australia's democracy or national security. This penalty would account for the severity of offending, noting the deterrent and early intervention objectives of the offence.

Item 2 Subsection 80.2BA(2) of the *Criminal Code* (penalty and note)

13. Item 2 would repeal the current penalty and note under subsection 80.2BA(2) of the Criminal Code and substitute it with a new penalty and explanatory notes. Subsection 80.2BA(2) provides an offence for threatening force or violence against groups distinguished by certain attributes.

14. The purpose of Note 1 at the end of subsection 80.2BA(2) is to direct readers to section 5.2 of the Criminal Code which contains a definition of 'intention'. This would reflect that the fault element attached to paragraph 80.2BA(1)(a) is intention, as defined in section 5.2 of the Criminal Code. The Bill does not amend this fault element, but simply renumbers the note to accommodate the second additional note.

15. Note 2 after subsection 80.2BA(2) would signpost the new aggravated offence for religious officials or other spiritual leaders etc. at new section 80.2DA.

16. The maximum penalty for the offence in subsection 80.2BA(2) would be increased from 5 years imprisonment to 7 years imprisonment. The increased penalty to the offence of threatening force or violence against groups would recognise that this type of conduct is a

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serious, intentional act which would cause significant harm to targeted groups. This increase in penalty would account for the severity of offending, noting the deterrent and early intervention objectives of the offence. This penalty would also align with other offences of similar severity in the Criminal Code, such as advocating terrorism (section 80.2C) or advocating genocide (section 80.2D).

Item 3 Subsection 80.2BB(1) of the *Criminal Code* (penalty and note)

17. Item 3 would repeal the current penalty and note under subsection 80.2BB(1) of the Criminal Code and substitute it with a new penalty and explanatory notes. Subsection 80.2BB(1) provides an offence for threatening force or violence against members of groups, distinguished by certain attributes, or their close associates, where that threat, if carried out, would threaten the peace, order and good government of the Commonwealth.

18. The purpose of Note 1 at the end of subsection 80.2BB(1) is to direct readers to section 5.2 of the Criminal Code which contains a definition of 'intention'. This would reflect that the fault element attached to paragraph 80.2BB(1)(a) is intention, as defined in section 5.2 of the Criminal Code. The Bill does not amend this fault element, but simply renumbers the note to accommodate the second additional note.

19. Note 2 after subsection 80.2BB(1) would signpost the new aggravated offence for religious officials or other spiritual leaders etc. at new section 80.2DA.

20. The maximum penalty for the offence in subsection 80.2BB(1) would be increased from 7 years imprisonment to 10 years imprisonment. The increased penalty to the offence of threatening force or violence against members of groups or their close associates where this threat, if carried out, would threaten the peace, order and good Government of the Commonwealth would recognise that this type of conduct is a serious, intentional act that would directly threaten Australia's democracy or national security. This penalty would account for the severity of offending, noting the deterrent and early intervention objectives of the offence.

Item 4 Subsection 80.2BB(2) of the *Criminal Code* (penalty and note)

21. Item 4 would repeal the current penalty and note under subsection 80.2BB(2) of the Criminal Code and substitute it with a new penalty and explanatory notes. Subsection 80.2BB(2) provides an offence for threatening force or violence against members of groups, distinguished by certain attributes, or their close associates.

22. The purpose of Note 1 at the end of subsection 80.2BB(2) is to direct readers to section 5.2 of the Criminal Code which contains a definition of 'intention'. This would reflect that the fault element attached to paragraph 80.2BB(2)(a) is intention, as defined in section 5.2 of the Criminal Code. The Bill does not amend this fault element, but simply renumbers the note to accommodate the second additional note.

23. Note 2 after subsection 80.2BB(2) would signpost the new aggravated offence for religious officials or other spiritual leaders etc. at new section 80.2DA.

24. The maximum penalty for the offence in subsection 80.2BB(2) would be increased from 5 years imprisonment to 7 years imprisonment. The increased penalty to the offence of threatening force or violence against members of groups or their close associates would

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recognise that this type of conduct is a serious, intentional act which would cause significant harm to targeted groups. This increase in penalty would account for the severity of offending, noting the deterrent and early intervention objectives of the offence. This penalty would also align with other offences of similar severity in the Criminal Code, such as advocating terrorism (section 80.2C) or advocating genocide (section 80.2D).

Item 5 Subsection 80.2BD(1) of the *Criminal Code* (penalty and note)

25. Item 5 would repeal the current penalty and note under subsection 80.2BD(1) of the Criminal Code and substitute it with a new penalty and explanatory notes. Subsection 80.2BD(1) provides an offence for threatening damage to or destruction of real property or motor vehicle, where the threat, if carried out, would threaten the peace, order and good government of the Commonwealth.

26. The purpose of Note 1 at the end of subsection 80.2BD(1) is to direct readers to section 5.2 of the Criminal Code which contains a definition of 'intention'. This would reflect that the fault element attached to paragraph 80.2BD(1)(a) is intention, as defined in section 5.2 of the Criminal Code. The Bill does not amend this fault element, but simply renumbers the note to accommodate the second additional note.

27. Note 2 after subsection 80.2BD(1) would signpost the new aggravated offence for religious officials or other spiritual leaders etc. at new section 80.2DA.

28. The maximum penalty for the offence in subsection 80.2BD(1) would be increased from 7 years imprisonment to 10 years imprisonment. The increased penalty to the offence of threatening damage to or destruction of real property or motor vehicle where the threat if carried out would threaten the peace, order and good government of the Commonwealth would recognise that this type of conduct is a serious, intentional act that would directly threaten Australia's democracy or national security. This penalty would account for the severity of offending, noting the deterrent and early intervention objectives of the offence.

Item 6 Subsection 80.2BD(2) of the *Criminal Code* (penalty and note)

29. Item 6 would repeal the current penalty and note under subsection 80.2BD(2) of the Criminal Code and substitute it with a new penalty and explanatory notes. Subsection 80.2BD(2) provides an offence for threatening damage to or destruction of real property or motor vehicle.

30. The purpose of Note 1 at the end of subsection 80.2BD(2) is to direct readers to section 5.2 of the Criminal Code which contains a definition of 'intention'. This would reflect that the fault element attached to paragraph 80.2BD(2)(a) is intention, as defined in section 5.2 of the Criminal Code. The Bill does not amend this fault element, but simply renumbers the note to accommodate the second additional note.

31. Note 2 after subsection 80.2BD(2) would signpost the new aggravated offence for religious officials or other spiritual leaders etc. at new section 80.2DA.

32. The maximum penalty for the offence in subsection 80.2BD(2) would be increased from 5 years imprisonment to 7 years imprisonment. This increased penalty to the offence of threatening damage to or destruction of real property, or motor vehicle would recognise

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that this type of conduct is a serious, intentional act which would cause significant harm to targeted groups. This increase in penalty would account for the severity of offending, noting the deterrent and early intervention objectives of the offence. This penalty would also align with other offences of similar severity in the Criminal Code, such as advocating terrorism (section 80.2C) or advocating genocide (section 80.2D).

Item 7 At the end of Subdivision C of Division 80 of the *Criminal Code*

33. Item 7 would insert new section 80.2DA at the end of Subdivision C of Division 80 of the Criminal Code. New section 80.2DA would provide aggravated offences for circumstances where a person in their capacity as a religious official, or a spiritual leader, or other leader (however described) of a group, who provides religious instruction or pastoral care (whether religious or secular), commits an offence against sections 80.2A to 80.2BE of the Criminal Code.

34. Religious, spiritual and other leaders occupy a position of significant trust and authority in the community. This influence can be exploited where such leaders espouse violent extremist views, resulting in the increased likelihood that their followers will be similarly radicalised or engage in acts of violence. As such, exploiting this position of trust and authority warrants higher penalties.

Section 80.2DA Aggravated offence for religious officials or other spiritual leaders etc.

35. New subsection 80.2DA(1) would provide that a person (the *offender*) commits an offence if:

    - The person commits an offence against subsection 80.2A(1), 80.2B(1), 80.2BA(1), 80.2BB(1), 80.2BC(1), 80.2BD(1) or 90.2BE(1) (the underlying offence), and

    - The conduct is engaged in by the person in the person's capacity as either:

        - a religious official, or

        - a spiritual leader or other leader (however described) of a group, who provides religious instruction or pastoral care (whether religious or secular).

36. Paragraph 80.2DA(1)(a) outlines the underlying offences for the aggravated offence. Offences against subsections 80.2A(1), 80.2B(1), 80.2BA(1), 80.2BB(1), 80.2BC(1), 80.2BD(1) or 80.2BE(1) of the Criminal Code have been chosen as the underlying offences as they involve advocating or threatening force or violence against groups, members of groups, because they are distinguished by a protected attribute, and their close associates, and their property, where the use of this force or violence would threaten the peace, order and good government of the Commonwealth.

37. Read together with new subsection 80.2DA(3), there is no fault element for the physical element in paragraph 80.2DA(1)(a) other than the fault elements (however described) for the underlying offence. The effect of this would be that, to establish the element at paragraph 80.2DA(1)(a), the prosecution would only have to establish, beyond reasonable doubt, all the elements of the underlying offence. New paragraph 80.2DA(4)(a) further clarifies that a person will not be taken to have committed an underlying offence for the

purpose of paragraph 80.2DA(1)(a) if they have a defence to the underlying defence. This would ensure fairness and consistency with existing provisions because if a defence applies to the underlying offence, the aggravated offence cannot be made out.

38. Paragraph 80.2DA(1)(b) makes it an aggravated offence if the person engaged in the underlying conduct in their capacity as a religious official, or spiritual leader, or other leader however described who provides religious instruction or pastoral care. This is intended to capture circumstances where those who occupy a position of significant trust and authority in the community exploit this influence by espousing violent extremist views. The fault element for this paragraph would be recklessness, as it is a physical element that consists of a circumstance, in accordance with section 5.6 of the Criminal Code. Recklessness is defined in section 5.4 of the Criminal Code as the offender being aware of a substantive risk that the circumstance exists or will exist, and having circumstances known to the offender it is unjustifiable to take that risk.

39. For paragraph 80.2DA(1)(b) to apply the underlying offences must be committed in the person's capacity as a religious official or other leader who provides religious instruction or pastoral care. Noting the aggravating circumstance is justified because of the trust and authority the religious official or leader has, it is important the aggravated offence is limited to conduct engaged in in that capacity.

40. The term ***religious official*** in paragraph 80.2DA(1)(b) would take its ordinary meaning. It is intended that religious officials mean a person who is authorised to lead or perform religious duties, such as ceremonies, rituals and preaching within their faith. This may involve an official title. For example, people who may be classified as priests, imams, rabbis, bishops, chaplains, and ministers.

41. The term ***spiritual leader*** in paragraph 80.2DA(1)(b) would take its ordinary meaning. It is intended that spiritual leaders mean people who guide individuals or groups in their spiritual practices, including their faith, values, and morals. This does not necessarily involve an official title or a widely recognised ideology. For example, people who may be classified as spiritual leaders include gurus, visionaries, guides, and mentors.

42. The inclusion of ***other leader (however described) of a group*** in paragraph 80.2DA(1)(b) is intended to capture leaders who may not fall under the category of religious official or spiritual leader but still occupy a position of significant trust and authority in the community.

43. While a spiritual or other leader, however described, is intended to capture a broad range of individuals that hold a position of authority or influence, the aggravated circumstance is limited by paragraph 80.2DA(2)(b)(ii) which provides that these individuals must also provide either religious instruction or pastoral care (whether religious or secular) to come within the scope of the aggravated offence.

44. The term ***religious instruction*** in paragraph 80.2DA(1)(b) would take its ordinary meaning. It is intended to capture the teaching of beliefs, values, and practices of a specific faith. The inclusion of this will ensure that leaders who provide religious instruction, whether holding an official role in the religious institution or not, would be captured. It does not matter whether the religious instruction is based on what is considered a legitimate or mainstream interpretation of the relevant faith or not.

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45. The term ***pastoral care (whether religious or secular)*** in paragraph 80.2DA(1)(b) would take its ordinary meaning. It is intended to capture emotional, spiritual, or psychological support provided through guidance, counselling and teaching. Pastoral care can be provided in religious or secular contexts.

46. This aggravated offence would carry a penalty of imprisonment for 12 years, an increase of 2 years from the underlying offences as amended by Parts 1 and 6 of Schedule 1 of the Bill. This maximum penalty reflects the principle in the Guide that an offence should have a 'maximum penalty that is adequate to deter and punish a worst-case offence'. The penalty for this aggravated offence would reflect the harm these leaders could inflict on Australian society if they were to commit such abhorrent acts in their capacity as a religious official, or other leader providing religious instruction or pastoral care.

47. New subsection 80.2DA(2) would apply where a person commits an offence if:

- The person commits an offence against subsection 80.2A(2), 80.2B(2), 80.2BA(2), 80.2BB(2), 80.2BC(2), 80.2BD(2) or 80.2BE(2) of the Criminal Code (the underlying offence), and

- The conduct is engaged in by the person in the person's capacity as either:

    - a religious official, or

    - a spiritual leader, or other leader (however described) of a group, who provides religious instruction or pastoral care (whether religious or secular).

48. Paragraph 80.2DA(2)(a) outlines the underlying offences for the aggravated offence. Offences against subsections 80.2A(2), 80.2B(2), 80.2BA(2), 80.2BB(2), 80.2BC(2), 80.2BD(2) or 80.2BE(2) of the Criminal Code have been chosen as the underlying offences as they involve advocating or threatening force or violence against groups, members of groups, because they are distinguished by a protected attribute, and their close associates, and their property.

49. Read together with new subsection 80.2DA(3), there is no fault element for the physical element in paragraph 80.2DA(2)(a) other than the fault element (however described) for the underlying offence. The effect of this would be that, to establish the element at paragraph 80.2DA(2)(a), the prosecution would only have to establish, beyond reasonable doubt, all the elements of the underlying offence.

50. Paragraph 80.2DA(2)(b) makes it an aggravated offence if the person engaged in the underlying conduct in their capacity as a religious official, or spiritual leader, or other leader however described who provides religious instruction or pastoral care. This is intended to capture circumstances where those who occupy a position of significant trust and authority in the community exploit this influence by espousing violent extremist views. The fault element for this paragraph would be recklessness, as it is a physical element that consists of a circumstance, in accordance with section 5.6 of the Criminal Code. Recklessness is defined in section 5.4 of the Criminal Code as the offender being aware of a substantive risk that the circumstance exists or will exist, and having circumstances known to the offender it is unjustifiable to take that risk.

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51. The terms used in paragraph 80.2DA(2)(b) have a consistent meaning with the equivalent terms in paragraph 80.2DA(1)(b) as described above.

52. The aggravated offence would carry a penalty of imprisonment for 10 years, an increase of 2 years from the underlying offences as amended by Parts 1 and 6 of Schedule 1 of the Bill. This maximum penalty reflects the principle in the Guide that an offence should have a 'maximum penalty that is adequate to deter and punish a worst-case offence'. The penalty for this aggravated offence would reflect the harm these leaders could inflict on Australian society if they were to commit such abhorrent acts in their capacity as a religious official, or other leader providing religious instruction or pastoral care.

53. New paragraph 80.2DA(4)(a) further clarifies that a person will not be taken to have committed an underlying offence for the purpose of either paragraph 80.2DA(2)(a) or paragraph 80.2DA(2)(b) if they have a defence to the underlying defence. This would ensure fairness and consistency with existing provisions because if a defence applies to the underlying offence, the aggravated offence cannot be made out.

54. New paragraph 80.2DA(4)(b) also clarifies that a person can be convicted of the aggravated offence if the person hasn't been convicted of the underlying offence, noting the offence underlying would need to be proven to make out the aggravated offence. Relatedly, new subsection 80.2DA(5) would provide that, to avoid doubt, if a person has been acquitted or convicted of an underlying offence, the person cannot be convicted of an offence against subsection 80.2DA(1) or 80.2DA(2) for the same conduct. This would ensure that a person cannot be tried for the same offence twice and would prevent multiple convictions for the same criminal conduct.

Part 2 – Increased penalty for using a postal or similar service to menace, harass or cause offence

Item 8 Section 471.12 of the *Criminal Code* (penalty)

55. Item 8 would repeal the current maximum penalty for using a postal or similar service to menace, harass or cause offence, at section 471.12 of the Criminal Code, and substitute it with:

    - Penalty: Imprisonment for 5 years.

56. The increased penalty to the offence of using a postal or similar service to menace, harass or cause offence, from 2 years to 5 years, would recognise that using a postal or similar service to menace, harass, or cause offence is a serious, intentional act that causes significant harm. It also ensures that the penalty is aligned with the penalty for section 474.17 of the Criminal Code, which is the offence of using a carriage service to menace, harass or cause offence and carries a penalty of imprisonment for 5 years. This conduct is just as serious whether it occurs through a postal or carriage service.

Item 9 Application

57. Item 9 ensures the amendments to the Criminal Code made by this Part apply in relation to conduct engaged in after the commencement of this Part.

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58. The purpose of this item is to ensure that the increased maximum penalties contained in this Part would only apply to conduct engaged in on or after the commencement of this Part and would not apply retrospectively.

Part 3 – Aggravated sentencing factor

Crimes Act 1914

Item 10 After paragraph 16A(2)(ma)

59. Hate motivated conduct can cause profound harms, beyond those generally experienced by the offending conduct itself. It is an attack on the dignity of targeted groups, and members of targeted groups, which affects the physical and psychological wellbeing of not only those who were targeted but of their whole community. Furthermore, it can lay a foundation for intolerance that undermines equality, respect and understanding in the community. In turn this can cause fear, anxiety and division, and have a detrimental impact on social cohesion of the Australian community. Introducing an aggravated sentencing factor is intended to ensure that, in sentencing a person for a Commonwealth offence, the courts recognise the increased seriousness of any offending where motivated by hatred for a person or group because of the person's race or national or ethnic origin, and the additional harm this causes to both the victim and the Australian community.

60. Item 10 would insert an additional general sentencing factor to which the court must have regard to when determining a sentence to be passed, or order to be made, in respect to a federal offence. Proposed paragraph 16A(2)(mb) provides that, when sentencing, the court must the following circumstance as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates:

- the person's conduct constituting the offence was motivated, whether wholly or partly, by hatred of another person (the targeted person) or a group of persons (the targeted group) (subparagraph 16A(2)(mb)(i)), and

- the hatred was because of the person's belief that the targeted person or persons in the targeted group are distinguished by a person's race or national or ethnic origin (subparagraph 16A(2)(mb)(ii)).

61. Where the above circumstance is relevant and known to the court, under proposed paragraph 16A(2)(mb), it will be taken as a reason for aggravating the seriousness of the criminal behaviour to which the offence relates.

62. New subparagraph 16A(2)(mb)(i) would allow the court to apply this sentencing principle so long as hatred of the targeted person or group formed part of the persons motivation. This is appropriate as the harms caused by hate motivated conduct exist regardless of whether hate is the sole motivation. As this is a sentencing principle, it is at the court's discretion as to how much they aggravate a sentence, within the limit set by the maximum penalty, when hate motivation is present. Therefore, in making this determination they can turn their minds to the level of hate motivation behind the conduct.

63. New subparagraph 16A(2)(mb)(ii) would provide that the motivation of the offender had to be based in their belief that the targeted person or persons in the targeted group are distinguished by race, national or ethnic origin. By operation of this subparagraph, the

court would not be required to prove that the targeted person or group was actually distinguished by that attribute but rather just that the offender believed that was the case. This is put beyond doubt by new paragraph 16(2)(2AAB) which is introduced by item 18.

Item 11 After subsection 16A(2AA)

64. Item 11 would introduce new subsection 16A(2AAB), which would provide that paragraph 16A(2)(mb) does not apply in relation to an offence against section 80.2A, 80.2B, 80.2BA, 80.2BB, 80.2BC, 80.2BD, 80.2BE, 80.2BF, 80.2DA or 80.2DB of the Criminal Code. This reflects that hate motivation is already an element within these offences and, therefore, the court already turns its mind to the hate motivation within the ordinary course of sentencing these offences.

65. Item 11 would also introduce new subsection 16A(2AAC) to assist in determining whether a person's conduct constituting the offence was motivated, whether wholly or partly, by hatred of a targeted person or targeted group for the purposes of new subparagraph 16A(2)(mb). New subsection 16A(2AAC) would provide that, without limiting subparagraph 16A(2)(mb), a person's conduct constituting the offence is motivated by hatred if, at the time of the conduct, or immediately before or after the conduct, the person demonstrated, or expressed, hostility, malice or ill-will in respect of the person or group's race or national or ethnic origin.

66. The effect of new subsection 16A(2AAC) would be that demonstrations or expressions of hostility, malice or ill-will on the grounds of the person or group's race, national or ethnic origin can be used to establish the aggravating factor without further evidence of the offender's motivation. This could include, for example, a racist slur used at the time of offending against a person of a particular ethnic origin. However, it is important to note that such a demonstration or expression must occur during the offending or immediately before or after the offending in order to allow the aggravating factor to be made out. A hate motivation could still be established for the purposes of subparagraph 16A(2)(mb), such as through a later admission, however would not be caught by this deeming provision.

67. Item 11 would also introduce new subsection 16A(2AAD) which provides, for the purposes of the new sentencing factor introduced by item 17, that it is immaterial whether the target person, or members of the target group, actually are distinguished by the particular race, or national or ethnic origin.

Part 4 – Prohibited hate groups

Division 1 – Main amendments

Criminal Code Act 1995

Item 12 After paragraph 5(2)(fa)

68. Item 12 would insert new paragraph 5(2)(fb) which would provide that for the purposes of the *Legislation Act 2003*, the Minister administering the AFP Act is the rule maker for regulations made for the purposes of Part 5.3B. This would ensure that the rule maker for regulations under Part 5.3B is the AFP Minister, not the Attorney-General who currently administers the Criminal Code, for the purposes of the Legislation Act.

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69. This is consistent with the AFP Minister being the rule maker for regulations made for the purpose of certain divisions of Part 5.3 and Part 5.3A of the Criminal Code.

Item 13 After Part 5.3A of the *Criminal Code*

70. Item 13 would insert new 'Part 5.3B—Prohibited hate groups' after Part 5.3A of the Criminal Code. Part 5.3B would comprise of three divisions:

- Division 114A—Preliminary, which would contain definitional provisions and procedural matters.

- Division 114B—Offences, which would contain offences in relation to certain dealings and interactions with a prohibited hate group.

- Division 114C—General provisions relating to offences, which would contain application provisions.

Part 5.3B – Prohibited hate groups

Division 114A—Preliminary

Section 114A.1—Objects

71. Section 114A.1 would insert an objects clause at the beginning of Division 114A. Paragraph (a) would provide that the objects of Part 5.3B are to protect the Australian community against social, economic, psychological and physical harm by prohibiting organisations that engage in, prepare or plan to engage in, or assist the engagement in, or advocate engaging in, conduct constituting a hate crime.

72. In addition to existing offences in Division 80 of the Criminal Code, which target individuals, the new prohibited hate group framework would seek to ensure that all members of our diverse community can be free of the harms caused by organisations and their members who engage in, threaten, advocate, or otherwise support violence targeted at groups distinguished by race, national or ethnic origin. Together with targeted criminal offences in new Division 114B, the new framework would target an organisation's ability to operate and expand, reducing their capacity to continue to engage in hate crimes. This framework would also act as a signal to the community that such groups will not be tolerated, disincentivising the formation of new organisations with similar goals, ideology and conduct.

73. Paragraph 114A.1(b) would provide additional objects of Part 5.3B as being to give effect to Australia's international obligations under two international conventions. Specifically:

- Articles 20 and 26 of the International Covenant on Civil and Political Rights (ICCPR), and

- Articles 4(a) and (b) of the International Convention on the Elimination of all Forms of Racial Discrimination (CERD).

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74. Through specifying (listing) organisations as prohibited hate groups, and as a consequence criminalising certain interactions with the organisation, the framework targets these organisations' ability to operate and engage in hateful discriminatory and violence conduct. This makes clear that conduct of this nature is unacceptable in Australia and engaging in such conduct is criminal. Therefore, the framework would give further effect to Australia's international obligations under Article 20 and 26 of the ICCPR, and Articles 4(a) and (b) of the CERD.

75. The text of the Convention and Covenant are accessible through the Australian Treaties Library on the AustLII website.

Section 114A.2—Definitions

76. Section 114A.2 would insert the following new definitions for the purposes of Part 5.3B:

- ***advocate***
- ***AFP Minister***
- ***funds***
- ***hate crime***
- ***member***
- ***organisation***
- ***prohibited hate group***
- ***prohibited hate group regulation, and***
- ***recruit.***

77. An organisation would ***advocate*** engaging in conduct constituting a hate crime if (see subsection 114A.1(2)):

- the organisation counsels, promotes, encourages or urges the engagement in conduct constituting a hate crime, or
- the organisation, provides instruction on how to engage in conduct constituting a hate crime, or
- the organisation praises the engagement in conduct constituting a hate crime, or conduct that would constitute a hate crime if engaged in in Australia, in circumstances where there is an unacceptable risk that such praise might have the effect of leading a person (regardless of the person's age or any mental impairment that the person might suffer) to engage in conduct constituting a hate crime.

78. This definition of ***advocate*** is intended to capture advocacy through any form of communication, including speaking, writing, displaying notices, graffiti, playing of

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recorded material, broadcasting, and communicating through social media and other electronic or communication methods.

79. ***AFP Minister*** would mean the Minister administering the *Australian Federal Police Act 1979*.

80. ***Funds*** would mean:

    - property and assets of every kind, whether tangible or intangible, moveable or immovable, however acquired, and

    - legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such property or assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit.

81. This is a broad definition of ***funds*** intended to provide wide coverage of funding activities, ensuring a person cannot escape liability on a technicality.

82. ***Hate crime*** would have the meaning given to it by section 114A.3.

83. ***Member*** of an organisation would be defined non-exhaustively to include any of the following:

    - a person who is an informal member of the organisation

    - a person who has taken steps to become a member of the organisation, and

    - in the case of an organisation that is a body corporate—a director or an officer of the body corporate.

84. This definition of ***member*** is broad and is intended to provide specific examples of the types of persons who are taken to be members and active supporters of a given organisation. This includes where a person actively supports the organisation, and is connected to the organisation, but where the organisation does not have a formal membership arrangement. For example, where the person actively participates in the activities of the organisation and espouses support for its goals and objectives.

85. ***Organisation*** would mean a body corporate or an unincorporated body, whether or not the body:

    - is based outside Australia

    - consists of persons who are not Australian citizens, or

    - is part of a larger organisation.

86. This definition of ***organisation*** is intended to be broad, to capture the various constructions of organisations which may be specified as prohibited hate groups under

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this framework. This includes where the organisation is not solely Australian based, or where the organisation listed may be a specific part of a larger organisation, as well as other legal and non-legal configurations such as associations.

87. ***Prohibited hate group*** would mean an organisation that is specified by the regulations for the purposes of this definition, as described by sections 114A.4–114A.8.

88. ***Prohibited hate group regulation*** would mean a regulation specifying an organisation for the purposes of the definition of ***prohibited hate group*** in this section.

89. ***Recruit*** would be defined to include induce, incite and encourage.

90. Though not separately defined, Part 5.3B makes reference to persons or groups distinguished by reference to their race or national or ethnic origin. ***Race***, or ***national or ethnic origin*** is intended to have the same meaning as in the *Racial Discrimination Act 1979* and would include consideration of characteristics such as shared history, separate cultural tradition, common geographical origin or descent from common ancestors, a common language, a common literature peculiar to the group, or a religion different from that of neighbouring groups or the general community surrounding the group.

Section 114A.3—Definition of *hate crime*

91. Subsection 114A.3(1) would define ***hate crime***, for the purposes of Part 5.3B, to mean conduct, or threat of conduct, that would constitute an offence against any of the following provisions of the Criminal Code:

    - Subdivision C of Division 80—Urging or threatening violence, offences against groups or members of groups, other than an offence against sections 80.2 (Urging violence against the Constitution), 80.2C (Advocating terrorism) or 80.2D (Advocating genocide) to the extent that the targeted group (within the meaning of the offence) is distinguished by race or national or ethnic origin.

    - Section 80.2H and 80.2HA—Publicly displaying prohibited symbols and giving Nazi salute.

92. Specifically, the offences that would fall within paragraph (1)(a) of the definition are:

    - Advocating force or violence against groups (section 80.2A)

    - Advocating for or violence against members of groups or close associates (section 80.2B)

    - Threatening force or violence against groups (section 80.2BA)

    - Threatening force or violence against members of groups or close associates (section 80.2BB)

    - Advocating damage to or destruction of real property or motor vehicle (section 80.2BC)

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- Threatening damage to or destruction of real property or motor vehicle (section 80.2BD)
- Advocating force or violence through causing damage to property (section 80.2BE)
- Publicly promoting and inciting racial hatred (new section 80.2BF).
- Aggravated offence for religious officials or other spiritual leaders etc. (new section 80.2DA)
- Aggravated offence for advocating violence or property damage etc. to a child (new section 80.2BD)
- Public display of prohibited Nazi symbols or giving Nazi salute (section 80.2H)
- Public display of prohibited organisation symbols (section 80.2HA).

93. Sections 80.2, 80.2C and 80.2D would be explicitly excluded from the definition of hate crime as these offences are targeted at conduct that would be inappropriate to capture in the definition of hate crime. Urging violence against the Constitution captures a broader range of conduct aimed at opposition to the institutions of Australia as opposed to violence directed at groups distinguished by race, national or ethnic origin. Hate crime conduct, while violent and offensive, generally falls short of terrorism, and is distinct from genocide. As such, advocating terrorism and advocating genocide should not be captured in this framework and are best criminalised through existing frameworks within the Criminal Code.

94. Subsection 114A.3(2) would clarify, for the purpose of subsection 114A.3(1), that a reference to conduct that would constitute an offence against one of the referenced provisions, includes conduct engaged in before the relevant provision commenced where it would have met the requirements of the offence if the offence had been in force at the time the conduct was engaged in. This does not indicate a retrospective application of the criminal law. The definition of hate crime is used for the purposes of establishing a threshold against which the AFP Minister must be satisfied before an organisation can be specified as a prohibited hate group.

95. Subsection 114A.3(3) provides an alternative definition of ***hate crime***. A hate crime would also include, as per paragraph 114A.2(2)(a), conduct or threat of conduct, (whether engaged in or threatened before or after commencement of this section):

- that involves, or would involve, any one or more of the following:
    - causing serious harm to a person (the *targeted person*)
    - causing serious damage to property (the *targeted property*)
    - causing a person's (the *target person*) death
    - endangering a person's (the *targeted person*) life, other than the life of the person taking the action, or

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- creating a serious risk to the health or safety of a section of the public (the *targeted persons*).

96. For the purposes of subsection 114A.3(3), and as provided by paragraph 114A.3(3)(b), to be a hate crime, the conduct, or threat of conduct, must also be engaged in because of the person's belief that:

- the targeted person, or persons, are distinguished by race or national or ethnic origin, or

- the targeted property is associated with a person, or persons, distinguished by race or national or ethnic origin.

97. The term ***serious harm***, as used in paragraph 114A.2(3)(a) is defined in the dictionary of the Criminal Code to mean harm that engagers, or is likely to endanger, a person's life, or that is or is likely to be significant and longstanding. The term ***harm*** also defined in the dictionary of the Criminal Code to mean physical harm or harm to a person's mental health, whether temporary or permanent. However, harm does not include being subjected to any force or impact that is within the limits of what is acceptable as incidental to social interaction or to life in the community.

98. Conduct that does not fall within one of the offences captured in subsection 114A.3(1), but would nevertheless cause serious harm, serious property damage or serious risk to the health of safety of a section of the public, and was engaged in because of a person's race or national or ethnic origin would be captured by subsection 114A.3(3). This would ensure that all violent conduct targeted at a person because of their race or national or ethnic origin is captured regardless of whether or not it falls within a specific Commonwealth offence, noting that this conduct is nevertheless of a criminal nature.

99. The occurrence of this conduct in the Australian community is unacceptable. It undermines and erodes Australia's shared values and social cohesion. This type of conduct is an attack on the dignity of targeted groups, and members of targeted groups, which affects the physical and psychological wellbeing of those targeted and the broader community.

100. This definition is not intended to capture mere expressions of opinion and belief. Conduct would fall within this definition where it involves threats of force or violence or other hate motivated offensive conduct.

101. Subsection 114A.3(4) would provide, that for the purposes of this definition, it is immaterial whether the targeted person or persons were actually distinguished by the race or national or ethnic origin, or the targeted property was actually associated with a person or persons distinguished by race or national or ethnic origin.

<u>114A.4—Regulations specifying prohibited hate groups</u>

102. Section 114A.4 would set out the requirements for the making of a regulation specifying an organisation as a prohibited hate group.

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103. Subsection 114A.4(1) would provide that before the Governor-General can make regulations specifying an organisation a prohibited hate group, the AFP Minister must be satisfied on reasonable grounds of the matters outlined in paragraphs 114A.4(1)(a) and (b).

104. Paragraph 114A.4(1)(a) would establish the first of the criteria that the AFP Minister must be satisfied prior to an organisation being listed as a prohibited hate group. This requirement focuses on the past conduct of the organisation, and in particular, requires that the organisation:

- has directly engaged in, prepared or planned to engage in, or assisted the engagement in conduct constituting a hate crime, or

- has advocated, whether or not in Australia, engaging in conduct constituting a hate crime, other than an offence against section 80.2A, 80.2B, 80.2BC or 80.2BE.

105. Sections 80.2A, 80.2B, 80.2BC or 80.2BE are excluded from subparagraph 114A.4(1)(ii) as each of these offences relates to advocating conduct. This avoids the situation where the subparagraph would apply to advocating a hate crime which relates to advocating.

106. Paragraph 114A.4(1)(b) would establish the second of the criteria that the AFP Minister must be satisfied prior to an organisation being listed as a prohibited hate group. This criteria is forward looking and requires the AFP Minister to be satisfied that specifying the organisation as a prohibited hate group is reasonably necessary to prevent a harm of a kind referred to in paragraph 114A.1(a), thereby establishing that listing the organisation is a proportionate response to protect the Australian community from harm.

107. The Regulations specifying an organisation as a prohibited hate group would be accompanied by an Explanatory Memorandum, including a public Statement of Reasons for listing. This Statement would set out a summary of the reasons why the Minister is satisfied that the organisation meets the legislative criteria in subsection 114A.4(1).

108. Subsection 114A.4(2) would contain an application clause in relation to subsection 114A.4(1). Paragraph 114A.4(2)(a) would provide that a reference to conduct constituting a hate crime includes a reference to conduct constituting a hate crime that occurred before the commencement of the provision enabling the making of the regulations. Paragraph 114A.4(2)(b) would provide that a reference to having engaged in prepared or planned to engage in, or assisted the engagement in, or having advocated engaging in conduct constituting a hate crime, includes having done this conduct before the commencement of the provision providing for the making of regulations specifying prohibited hate groups. This ensures that past actions of the organisation can be taken into account by the AFP Minister.

109. Subsection 114A.4(3) would provide that a reference to engaging in conduct constituting a hate crime would also include a reference to engaging in conduct constituting a hate crime even if a hate crime doesn't occur, engaging in a specific a hate crime or engaging in more than one hate crime.

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110. Subsection 114A.4(4) would clarify that a person is not required to have been convicted of an offence for the AFP Minister to be satisfied that an organisation has engaged in conduct constituting a hate crime.

111. Subsection 114A.4(5) would provide that the AFP Minister is not required to observe any requirements of procedural fairness in deciding whether or not the AFP Minister is satisfied for the purpose of specifying an organisation under this section.

112. The inclusion of this subsection makes express the intention of the Parliament that procedural fairness is not required to be observed by the AFP Minister in their decision to recommend specification of an organisation under this section. This accords with procedural fairness not attaching to the advice of the Director-General of Security under section 114A.5, and the operation of proscription frameworks for terrorist organisations (Division 102) and state sponsors of terrorism (Division 110), which though not express in exclusion, also do not apply procedural fairness to proscription related decisions of the AFP Minister. Requiring procedural fairness for such decisions would create opportunities for protracted challenge and delay, which would be inconsistent with the Government's intent that organisations which meet the threshold for proscription are prescribed in an efficient and timely manner to reduce the possibility of further harm to the community and appropriately criminalise certain engagements with the group.

<u>114A.5—Director-General of Security advice to be provided before specifying an organisation as a prohibited hate group</u>

113. Section 114A.5 would require that before the AFP Minister can make a recommendation to the Governor-General for the making of a regulation specifying an organisation as a prohibited hate group, written advice recommending consideration of the specification of the organisation must be received from the Director-General of Security.

114. Subsection 114A.5(1) would provide the circumstances in which the Director-General of Security may provide written advice recommending the AFP Minister consider specifying an organisation as a prohibited hate group. The Director-General may provide this advice only if they are satisfied of one or more of the following:

- Both of the following apply:
    - the organisation has engaged in activities (subparagraph 114A.5(1)(a)(i))
    - the Director-General is satisfied that the activities, or continued engagement in the activities, would or are likely to increase the risk of ***politically motivated violence***, or of the ***promotion of communal violence*** (subparagraph (1)(a)(ii))
- The organisation has:
    - advocated for or engaged in ***politically motivated violence*** or engaged in the ***promotion of communal violence*** (subparagraph 114A.5(1)(b)(i)), or
    - engaged in activities that indicate a risk that the organisation may advocate for or engage in ***politically motivated violence*** or engage in the ***promotion of communal violence*** in the future (subparagraph 114A.5(1)(b)(ii)).

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115. The circumstances which the Director-General must be satisfied of in subsection 114A.5(1) are aligned with appropriate heads of security as defined in the definition of security in the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), and therefore the functions of the Australian Security Intelligence Organisation (ASIO) as set out in that Act. Other heads of security set out in the ASIO Act such as espionage and attacks on Australia's defence system, are not sufficiently connected to the object of this framework (see section 114A.1) and are otherwise addressed throughout the Criminal Code and broader Commonwealth statute book. It is therefore appropriate that the circumstances of advice are targeted to politically motivated violence and the promotion of communal violence.

116. Subsection 114A.5(2) would provide that the AFP Minister may only make a recommendation for the making of regulations specifying an organisation as a prohibited hate group, if advice under subsection (1) has been provided. This requirement formalises the established practice of proscription decisions being based on advice of law enforcement and intelligence agencies, ensuring that these decisions which carry significant criminal implications are informed by appropriate intelligence.

117. Subsection 114A.5(3) would provide that the AFP Minister may take into account other information, in addition to the written advice under subsection (1), in determining whether an organisation should be specified as a prohibited hate group. The effect of this subsection is to avoid any doubt as to whether information from other sources can be used by the Minister to inform their decision-making in relation to the matters set out in section 114A.4. Other sources of information could include open-source reporting or advice from law enforcement.

118. Subsection 114A.5(4) would expressly provide that, the function of the Director-General of providing written advice under this section, is to be taken as a function of the Organisation under the ASIO Act.

119. Subsection 114A.5(5) would provide that the Director-General is not required to observe any requirements of procedural fairness in providing advice under this section.

120. The inclusion of this subsection makes express the intention of the Parliament that procedural fairness is not required to be observed by the Director-General in their provision of advice. This accords with procedural fairness not attaching to the decision of the AFP Minister under section 114A.4. Requiring procedural fairness for such decisions would create opportunities for protracted challenge and delay, which would be inconsistent with the Government's intent that organisations which meet the threshold for proscription are prescribed in an efficient and timely manner to reduce the possibility of further harm to the community and appropriately criminalise certain engagements with the group. Further, the advice of the Director-General in recommending the AFP Minister consider the specification of an organisation as a prohibited hate group is not a decision for such specification.

121. Subsection 114A.5(6) would provide definitions applicable to the circumstances that the Director-General must be satisfied of in providing advice in subsection 114A.5(1). Those definitions relevantly provide:

- ***Politically motivated violence*** has the meaning given by section 4 of the *Australian Security Intelligence Organisation Act 1979*.

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- ***Promotion of communal violence*** has the meaning given by section 4 of the *Australian Security Intelligence Organisation Act 1979*.

114A.6—Engaging with the Attorney-General and Leader of the Opposition

122. Section 114A.6 would require certain engagement to be undertaken before the Governor-General can make a regulation specifying a prohibited hate group. Specifically, the AFP Minister must:

- obtain the agreement of the Attorney-General, in writing, to the organisation being specified as a prohibited hate group (paragraph 114A.6(a)), and

- arrange for the Leader of the Opposition in the House of Representatives to be briefed in relation to a proposed regulation to specify an organisation as a prohibited hate group (paragraph 114A.6(b)).

123. These requirements represent appropriate safeguards in the process of specifying an organisation as a prohibited hate group, ensuring that all legal and other implications have been considered by the Government, and that both the Government and Opposition are aware of significant decisions affecting the safety of the Australian community.

114A.7—Including or removing names of prohibited hate groups

124. Section 114A.7 would allow for the AFP Minister to include or remove names of specified prohibited hate groups. This ensures that the regulations can be updated to reflect where organisations are referred to by another name, in addition to, or instead of, the name that is specified in the regulation (subparagraph 114A.7(1)(b)(i) and paragraph 114A.7(2)(a)). This section would also allow the removal of former names of prohibited hate groups from the regulations specifying the organisation where they no longer use the name (subparagraph 114A.7(1)(b)(ii) and paragraph 114A.7(2)(a)).

125. Subsection 114A.7(3) would provide that the amendment of regulations under subsection 114A.7(2) does not prevent the further amendment or repeal of the regulations by regulations made under section 5 of the Criminal Code for the purposes of the definition of ***prohibited hate group*** (see subsection 114A.2(1)).

126. Subsection 114A.7(4) would provide that this provision does not allow the AFP Minister to amend the regulations to remove an organisation that has been specified entirely. The procedure for removing an entity is described in section 114A.8. Nor does it affect the power under section 5 of the Criminal Code to make regulations for the purposes of the definition of ***prohibited hate group*** (subsection 114A.7(5)).

114A.8—De-listing a prohibited hate group

127. Section 114A.8 would provide for a mechanism to de-list a prohibited hate group. If the AFP Minister ceases to be satisfied that it is reasonably necessary for an organisation to remain specified as a prohibited hate group in order to prevent any of the kinds of harm in paragraph 114A.1(a), the AFP Minister must, by notifiable instrument, make a declaration that they have ceased to be so satisfied (subsection 114A.8(1)). The de-listing mechanism

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is designed so that organisations are only specified so long as is reasonably necessary to prevent social, economic, psychological or physical harm to the Australian community. This ensures that the mechanism is reasonably appropriate and adapted to the purpose of protecting the Australian community from hateful and extremist conduct.

128. Subsection 114A.8(1) imposes a positive obligation on the AFP Minister to remain satisfied that it is reasonably necessary for an organisation to continue to be specified. This is an appropriate safeguard to ensure that organisations who no longer pose a risk to the Australian community cease to be specified as a prohibited hate group. If a person makes submissions to the Minister in relation to de-listing a prohibited hate group under subsection 114A.8(1), the submissions would need to be considered in a reasonable timeframe, having regard to the complexity of the matters raised by the submission and the need for the AFP Minister to obtain relevant advice.

129. Subsection 114A.8(2) would provide that AFP Minister must consider the matters in subsection 114A.4(1) and consult the Attorney-General before making a de-listing declaration. As the Attorney-General's agreement is required before making a regulation specifying an organisation as a prohibited hate group, this consultation is required to ensure the legal and other implications of a de-listing are considered.

130. Subsection 114A.8(3) requires that the declaration by the AFP Minister under subsection 114A.8(1) must include the day on which the Minister ceased to be satisfied as to the matters mentioned in paragraph (1)(b). This is to ensure that there is clarity on when an organisation is no longer specified as a prohibited hate group and the offences associated with specific dealings with the prohibited hate group no longer apply.

131. Subsection 114A.8(4) would provide that the regulations specifying a prohibited hate group would cease to have effect on the day specified in the declaration that the AFP Minister ceased to be satisfied. This will be the case even if the declaration is made after the day the AFP Minister ceases to be satisfied.

132. Subsection 114A.8(5) would provide that where an organisation is de-listed under section 114A.8(1), this does not prevent the organisation from being subsequently specified by the regulations as a prohibited hate group if the AFP Minister becomes satisfied the listing criteria in subsection 114A.4(1) is met. This makes clear that a de-listed organisation may be re-listed later if the criteria is met.

114A.9—Reviews by Parliamentary Joint Committee on Intelligence and Security

133. Section 114A.9 would allow for the Parliamentary Joint Committee on Intelligence and Security (PJCIS) to review, at any time, the legislative instrument specifying an organisation as a prohibited hate group under section 114A.4, and an instrument made under section 114A.7 to add, or remove, names of prohibited hate groups (subsection 114A.9(1)). The PJCIS may also report the Committee's comments and recommendations to each House of the Parliament (subsection 114A.9(2)).

134. Section 114A.9 would also allow the extension of the disallowance period where a PJCIS report on a review of the regulations above, is tabled during the applicable disallowance period of that House of the Parliament and it is on or after the eighth sitting day of the applicable disallowance period, in accordance with subsection 114A.9(3). This

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is to ensure that Parliament has sufficient time to consider the Committee's report before the end of the disallowance period.

135. The applicable disallowance period for a House of the Parliament is the period of 15 sitting days of that House of the Parliament after the disallowable legislative instrument was laid before that House of the Parliament, as provided by subsection 114A.9(4).

Division 114B—Offences

136. Division 114B would provide for a series of offences with respect to dealings with an organisation that is specified as a prohibited hate group by regulations under Part 5.3B. Offences include directing activities, having membership, recruiting, training, funding and providing support for a prohibited hate group. These offences are intended to target the prohibited hate groups' ability to operate and in turn reducing the harm to the community posed by these groups.

Section 114B.1—Directing the activities of a prohibited hate group

137. Section 114B.1 would create two new offences in relation to directing the activities of a prohibited hate group, as defined in section 114A.2.

138. To be guilty of the offence at subsection 114B.1(1), the person must intentionally direct the activities of an organisation (paragraph 114B.1(1)(a)), the organisation must be a prohibited hate group (paragraphs 114B.1(1)(b)), and the person must know that the organisation is a prohibited hate group (paragraph 114B.1(1)(c)). Intention and knowledge are defined, respectively, in sections 5.2 and 5.3 of the Criminal Code.

139. A person would be guilty of the offence at subsection 114B.1(2) if the person intentionally directs the activities of an organisation (paragraph 114B.1(2)(a)), the organisation must be a prohibited hate group (paragraphs 114B.1(2)(b)), and the person is reckless as to whether the organisation is a prohibited hate group (paragraphs 114B.1(2)(c)). Intention and recklessness are defined, respectively, in sections 5.2 and 5.4 of the Criminal Code.

140. The offence at subsection 114B.1(1) would be punishable by a maximum penalty of 15 years imprisonment, while the offence at subsection 114B.1(2) would be punishable by a maximum penalty of 10 years imprisonment. Prohibited hate groups inflict harm on the Australia community, and therefore those in leadership positions within those organisations who direct their activities, must be subject to serious criminal penalties. In a worst case scenario, a person could direct the activities of the organisation by tasking its members to commit a hate crime which involves the death of a person. Noting the lower fault element in paragraph 114B.1(2)(c) relative to paragraph 114B.1(1)(c), the offence at subsection 114B.1(2) appropriately has a lower penalty.

141. The defences at section 114B.7 would apply to offences against section 114B.1.

Section 114B.2—Membership of a prohibited hate group

142. Section 114B.2 would create a new offence in relation to membership of a prohibited hate group. The term member is defined non-exhaustively in section 114A.2.

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143. A person would be guilty of the offence at subsection 114B.2(1) if the person intentionally is a member of an organisation (paragraph 114B.2(1)(a)), the organisation is a prohibited hate group (paragraph 114B.2(1)(b)), and the person knows the organisation is a prohibited hate group (paragraphs 114B.2(1)(c)).

144. The offence at section 114B.2 would be punishable by a maximum penalty of 7 years imprisonment. Prohibited hate groups inflict harm on the Australia community, and therefore persons who are knowingly members of these criminal organisations, must be subject to serious criminal penalties.

145. Subsection 114B.2(2) would provide that the offence does not apply if the person proves that they took all reasonable steps to cease to be a member of the organisation as soon as practicable after the person knew that the organisation was a prohibited hate group. The defendant would bear the legal burden in relation to this exception.

146. The Guide acknowledges that there are circumstances where a legal burden can be placed on the defendant, although this should be kept to a minimum. In Report 5 of 2010, the Scrutiny of Bills Committee also acknowledged that where it would be extremely difficult or expensive for the prosecution to prove a matter, whereas the evidence could be readily and cheaply provided by the accused and is peculiarly within the knowledge of the accused, the burden of adducing evidence might be placed on the accused.

147. Placing the legal burden on the defendant to prove the exception in subsection 114B.2(2) is proportionate and appropriate in this circumstance as the information required to positively prove, on the balance of probabilities, that the defendant took all reasonable steps to cease to be a member of the organisation as soon as practicable after the defendant knew that organisation was a prohibited hate group, would be peculiarly within the knowledge of the defendant and readily and cheaply available to the defence to adduce in court. For the prosecution to establish this element would be significantly more costly and difficult and may lead to unnecessary delays to the court process, impacting on the defendant's ability to have their case heard and concluded in a timely manner.

148. Alongside the exception at subsection 114B.2(2), the defences at section 114B.7 would apply to the offence at section 114B.2.

Section 114B.3—Recruiting for a prohibited hate group

149. Section 114B.3 would create two new offences in relation to recruiting for a prohibited hate group, as defined in section 114A.2. To recruit a person would include induce, incite or encourage that person to join, or participate in the activities of, an organisation (see section 114A.2).

150. A person would be guilty of the offence at subsection 114B.3(1) if the person intentionally recruits a person to join, or participate in the activities of, an organisation (paragraph 114B.3(1)(a)), the organisation is a prohibited hate group (paragraph 114B.3(1)(b)), and the first-mentioned person knows that the organisation is a prohibited hate group (paragraph 114B.3(1)(c)).

151. A person would be guilty of the offence at subsection 114B.3(2) if the person intentionally recruits a person to join, or participate in the activities of, an organisation

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(paragraph 114B.3(2)(a)) and the first-mentioned person is reckless as to whether the organisation is a prohibited hate group (paragraphs 114B.3(2)(b) and 114B.3(2)(c)).

152. The offence at subsection 114B.3(1) would be punishable by a maximum penalty of 15 years imprisonment, while the maximum penalty for the offence at subsection 114B.3(2) would be 10 years. Prohibited hate groups inflict harm on the Australia community, and therefore persons who are intentionally seeking to expand the membership of these criminal organisations, must be subject to serious criminal penalties. Noting the lower fault element in paragraph 114B.3(2)(c) relative to paragraph 114B.3(1)(c), the offence at subsection 114B.3(2) the offence at subsection 114B.1(2) appropriately has a lower penalty.

153. The defences at section 114B.7 would apply to offences at section 114B.3.

Section 114B.4—Training involving a prohibited hate group

154. Section 114B.4 would create a new offence in relation to training involving a prohibited hate group.

155. A person would be guilty of the offence at subsection 114B.4(1) if the person:

- Intentionally engages in any of the following conduct:
    - provides training to an organisation intending the training to assist the organisation to engage in conduct described in paragraph 114A.4(1)(a) (subparagraph 114B.4(1)(a)(i))
    - provides training to an organisation intending the training to assist the organisation to expand or to continue to exist (subparagraph 114B.4(1)(a)(ii))
    - receives training from an organisation (subparagraph 114B.4(1)(a)(iii))
    - participates in training with an organisation (subparagraph 114B.4(1)(a)(iv)), and
- the organisation is a prohibited hate group (paragraph 114B.4(1)(b)).

156. The provision of training to an organisation requires the intention that it will assist the organisation to engage in conduct constituting a hate crime as defined in paragraph 114A.4(1)(a) (subparagraph (1)(a)(i)) or assist the organisation to expand or continue to exist (subparagraph (1)(a)(ii)). For example, providing training in hand to hand combat may fall under subparagraph (1)(a)(i) if it is intended this training would assist the organisation in engaging in hate crimes. This limitation on the provision of training will ensure that third parties aren't captured where they provide training to an organisation which is wholly unrelated to the criminal objectives of the organisation, therefore ensure the scope of the offence is appropriate. The same additional requirements are not required in relation to receiving training from, or participating in training with, as such conduct is less likely to be undertaken by an innocent third party.

157. Subsection 114B.4(2) provides that strict liability attaches to the element that the organisation is a prohibited hate group in paragraph 114B.4(1)(b). The prosecution still

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has to prove that the person intentionally provided training to, received training from or participate in training with, an organisation, and that the organisation is specified by regulations as a prohibited hate group. However, the prosecution would not have to prove that the person was aware that the organisation was specified as a prohibited hate group.

158. The application of paragraph 6.1(2)(b) of the Criminal Code means that the person would have the defence of mistake of fact under section 9.2 available. This provides that a person is not criminally responsible if, before the time of the offence, the person considered whether or not the organisation was a prohibited hate group, and the person was under the mistaken but reasonable belief that it was not such an organisation. The defendant would bear the evidential burden in respect of a defence of mistake of fact.

159. In addition to the defence of mistake of fact, subsection 114B.4(3) includes a recklessness exception. The exception would provide that the offence does not apply if the person was not at least reckless as to the organisation being a prohibited hate group. Under subsection 5.4(4) of the Criminal Code, recklessness can be established by proving intention, knowledge or recklessness. The defendant would bear the evidential burden in respect of this exception.

160. The reversal of the evidential burden of proof in subsection 114B.4(3) is consistent with section 13.3 of the Criminal Code. Under subsection 13.3(3), a defendant who wishes to rely on an exception or defence bears the evidential burden in relation to that defence or exception. This requires the defendant to adduce or otherwise point to evidence that suggests a reasonable possibility that a particular matter exists or does not exist.

161. The Guide acknowledges that it is appropriate to reverse the onus of proof and place a burden on the defendant in certain circumstances. This includes where a matter is peculiarly within the knowledge of the defendant, and where it would be significantly more difficult and costly for the prosecution to disprove the matter than for the defendant to establish the matter.

162. It is reasonable and necessary for the burden of proof to be placed on the defendant in relation to the exception in subsection 114B.4(3) as any evidence which would support the defendant not being reckless to the circumstance in paragraph 114B.4(1)(b) would be peculiarly within the knowledge of the defendant. Consistent with subsection 13.3(3) of the Criminal Code, the defendant will need to point to evidence that suggests a reasonable possibility that the exception is made out. If this is done, the prosecution must refute the application of the exception beyond a reasonable doubt in line with subsection 13.1(2).

163. It is appropriate and proportionate to have an exception which places an evidential burden on the defendant because the prosecution will still be required to prove each element of the offence beyond a reasonable doubt. Further, if the defendant discharges an evidential burden to establish a matter, the prosecution will be required to disprove the matters beyond a reasonable doubt, consistent with subsection 13.1(2) of the Criminal Code.

164. The offence at section 114B.4 would be punishable by a maximum penalty of 15 years imprisonment.

165. In addition to mistake of fact and the recklessness exception, the defences at section 114B.7 would apply to the offence at section 114B.4.

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Section 114B.5—Getting funds to, from or for a prohibited hate group

166. Section 114B.5 would create two new offences in relation to getting funds to, from or for a prohibited hate group.

167. A person would be guilty of an offence against subsection 114B.5(1) if the person:

- Intentionally engages in any of the following conduct:
    - Receives fund from, or makes funds available to, an organisation intending the funds to assist the organisation to engage in conduct described in paragraph 114A.4(1)(a) (subparagraph 114B.5(1)(a)(i))
    - Receives funds from, or makes funds available to, an organisation intending the training to assist the organisation to expand or to continue to exist (subparagraph 114B.5(1)(a)(ii))
    - Collects fund for, or on behalf of, an organisation (whether directly or indirectly) (subparagraph 114B.5(1)(a)(iii)), and
- the organisation is a prohibited hate group (paragraph 114B.4(1)(b)).

168. The offence in subsection 114B.5(1) consists of three components. The first component consists of multiple alternative elements relating to dealing with funds. The person must have done one of the following:

- intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly) intending the receipt or provision of the funds to assist the organisation to engage in conduct described in paragraph 114A.4(1)(a) (subparagraph 114B.5(1)(a)(i))
- intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly) intending the receipt or provision of the funds to assist the organisation to expand or to continue to exist (subparagraph 114A.5(1)(a)(ii)), or
- collects funds for, or on behalf of, an organisation (whether directly or indirectly) (subparagraph 114A.5(1)(a)(iii)).

169. The requirements in subparagraphs 114A.5(1)(a)(i) and (ii) that the dealing with the funds is intended to assist the organisation to engage in criminal conduct, expand or continue to exist, will ensure that legitimate engagement with the organisation by third parties is not inappropriately criminalised. These requirements do not apply to subparagraph 114A.5(1)(a)(iii) as someone acting for, on behalf of, a criminal organisation has a different level of culpability.

170. The second element of the offence in subsection 114B.5(1) is that the organisation is a prohibited hate group (subparagraph 114B.5(1)(b)). The third element of the offence in subsection 114B.5(1) is that the person knows the organisation is a prohibited hate group (subparagraph 114B.5(1)(c)).

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171. The offence at subsection 114B.5(1) would be punishable by a maximum penalty of 15 years imprisonment.

172. A person would be guilty of an offence against subsection 114B.5(2) if the person:

- intentionally engages in any of the following conduct:
    - Receives funds from, or makes funds available to, an organisation intending the funds to assist the organisation to engage in conduct described in paragraph 114A.4(1)(a) (subparagraph 114B.5(2)(a)(i))
    - Receives funds from, or makes funds available to, an organisation intending the training to assist the organisation to expand or to continue to exist (subparagraph 114B.5(2)(a)(ii))
    - Collects funds for, or on behalf of, an organisation (whether directly or indirectly) (subparagraph 114B.5(2)(a)(iii)), and
- the organisation is a prohibited hate group (paragraph 114B.5(2)(b)), and
- the person is reckless as to whether the organisation is a prohibited hate group (paragraph 114B.5(2)(c)).

173. The offence in subsection 114B.5(2) similarly consists of three components. The first component consists of multiple alternative elements relating to dealing with funds. The person must have done one of the following:

- intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly) intending the receipt or provision of the funds to assist the organisation to engage in conduct described in paragraph 114A.4(1)(a) (subparagraph 114B.5(2)(a)(i))
- intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly) intending the receipt or provision of the funds to assist the organisation to expand or to continue to exist (subparagraph 114A.5(2)(a)(ii)), or
- collects funds for, or on behalf of, an organisation (whether directly or indirectly) (subparagraph 114A.5(2)(a)(iii)).

174. The requirements in subparagraphs 114A.5(2)(a)(i) and (ii) that the dealing with the funds is intended to assist the organisation to engage in criminal conduct, expand or continue to exist, will ensure that legitimate engagement with the organisation by third parties is not inappropriately criminalised. These requirements do not apply to subparagraph 114A.5(2)(a)(iii) as someone acting for, on behalf of, a criminal organisation has a different level of culpability.

175. The second element of the offence in subsection 114B.5(2) is that the organisation is a prohibited hate group (subparagraph 114B.5(2)(b)). The third element of the offence in subsection 114B.5(2) is that the person is reckless as to whether the organisation is a prohibited hate group (subparagraph 114B.5(2)(c)).

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176. The offence at subsection 114B.5(2) would be punishable by a maximum penalty of 10 years imprisonment. This is a lower penalty relative to the offence in subsection 114B.5(1), as this offence only requires the person to be reckless as whether that the organisation is a prohibited hate group, rather than know that they are such a group.

177. Subsection 114B.5(3) would provide exceptions to the offences. The offences at subsections 114B.5(1) and (2) would not apply to the person's receipt of funds from the organisation if the person received the funds solely for the purpose of the provision of:

- legal representation for a person in proceedings relating to Part 5.3B (paragraph 114B.5(3)(a))

- legal advice or representation in connection with the question of whether the organisation is a prohibited hate group (paragraph 114B.5(3)(b)), or

- assistance to the organisation for it to comply with a law of the Commonwealth, a State or Territory (paragraph 114B.5(3)(c)).

178. The defendant would bear the legal burden in respect of these defences.

179. The exceptions at subsection 114B.5(3) are necessary and appropriate to ensure that legal practitioners are not inadvertently captured by this offence when providing legal services to persons accused of an offence against Division 114B or organisations seeking advice on their status as a prohibited hate group under Division 114A. Ensuring access to justice is a fundamental tenant of criminal law.

180. Due to protections associated with legal professional privilege, the defendant is more appropriately placed to prove the fact, and nature, of their engagement with their client.

181. The reversal of the burden of proof and the imposition of a legal burden is consistent with section 13.4 and 13.5 of the Criminal Code. The Guide acknowledges that there are circumstances where a legal burden can be placed on the defendant, although this should be kept to a minimum. In *Report 5 of 2010*, the Scrutiny of Bills Committee also acknowledged that where it would be extremely difficult or expensive for the prosecution to prove a matter, whereas the evidence could be readily and cheaply provided by the accused and is peculiarly within the knowledge of the accused, the burden of adducing evidence might be placed on the accused.

182. Placing the legal burden on the defendant is proportionate and appropriate in this circumstance as the information required to positively prove that the defendant's receipt of funds from the organisation was received solely for the purpose of the provision of a service outlined in paragraphs 114B.5(3)(a)-(c) would be peculiarly within the knowledge of the defendant and readily and cheaply available to the defence to adduce in court. For the prosecution to establish this element would be significantly more costly and difficult and may lead to unnecessary delays to the court process, impacting on the defendant's ability to have their case heard and concluded in a timely manner.

183. Alongside the exception at subsection 114B.5(3), the defences at section 114B.7 would apply to offences against section 114B.5.

<u>Section 114B.6—Providing support to a prohibited hate group</u>

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184. Section 114B.6 would create two new offences in relation to providing support to a prohibited hate group.

185. The offence in subsection 114B.6(1) consists of three components. The first element requires that the person intentionally provides to an organisation support or resources intending the support or resources to assist the organisation to either:

- engage in conduct described in paragraph 114A.4(1)(a) (subparagraph 114B.6(1)(a)(i)), or

- expand or to continue to exist (subparagraph 114B.6(1)(a)(ii)).

186. This ensures that the offence is appropriate and proportionate by only capturing conduct which supports the harmful conduct of the organisation, or the organisation as a whole. It is not the intention of the offence to capture conduct with no connection to the group's activity such as providing the group with transport unconnected to the group's criminal conduct.

187. The second element of the offence in subsection 114B.6(1) is that the organisation is a prohibited hate group (subparagraph 114B.6(1)(b)). The third element of the offence in subsection 114B.6(1) is that the person knows the organisation is a prohibited hate group (subparagraph 114B.6(1)(c)).

188. The offence at subsection 114B.6(1) would be punishable by a maximum penalty of 15 years imprisonment.

189. The offence in subsection 114B.6(2) consists of three components. The first element requires that the person intentionally provides to an organisation support or resources intending the support or resources to assist the organisation to either:

- engage in conduct described in paragraph 114A.4(1)(a) (subparagraph 114B.6(2)(a)(i)), or

- expand or to continue to exist (subparagraph 114B.6(2)(a)(ii)).

190. This ensures that the offence is appropriate and proportionate by only capturing conduct which supports the harmful conduct of the organisation, or the organisation as a whole. It is not the intention of the offence to capture conduct with no connection to the group's activity such as providing the group with transport unconnected to the group's criminal conduct.

191. The second element of the offence in subsection 114B.6(2) is that the organisation is a prohibited hate group (subparagraph 114B.6(2)(b)). The third element of the offence in subsection 114B.6(2) is that the person knows the organisation is a prohibited hate group (subparagraph 114B.6(2)(c)).

192. The offence at subsection 114B.6(2) would be punishable by a maximum penalty of 10 years imprisonment. This is a lower penalty relative to the offence in subsection 114B.6(1), as this offence only requires the person to be reckless as whether that the organisation is a prohibited hate group, rather than know that they are such a group.

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193. The defences at section 114B.7 would apply to offences at section 114B.6.

Section 114B.7—General defences

194. Section 114B.7 would provide for general defences applicable to the offences in Division 114B. The defences apply in respect of limited but legitimate engagement with organisations that are prohibited hate groups. These defences are aimed at ensuring government officials, and related persons, can carry out their functions unimpeded. This includes conduct that is engaged in in accordance with an arrangement or agreement to which the Commonwealth is a party, or to perform an official duty or function for the Commonwealth, or a State or Territory. The defendant would bear the evidential burden of proof in respect of these defences.

195. Paragraph 114B.7(a) would provide that it is not an offence against Division 114B to do a thing in accordance with an arrangement or agreement to which the Commonwealth is a party. Agreements or arrangements are not always publicly available, and may in some circumstances be classified, therefore it would be significantly less difficult and costly for the defendant to identify the arrangement or agreement they were acting in accordance with.

196. Paragraph 114B.7(b) would provide that it is not an offence against Division 114B to perform an official duty or function for the Commonwealth, or a State or Territory. It is appropriate that the defendant bears the evidential burden in relation to this defence as the defendant would have peculiar knowledge as to their particular official duties and functions and how the relevant conduct fell within those duties or functions. This is particularly relevant when considering the types of officials that would likely engage with a prohibited hate group and the sensitive and/or classified environment in which they work.

197. The reversal of the evidential burden of proof in section 114B.7 is consistent with section 13.3 of the Criminal Code. Under subsection 13.3(3), a defendant who wishes to rely on an exception or defence bears the evidential burden in relation to that defence or exception. This requires the defendant to adduce or otherwise point to evidence that suggests a reasonable possibility that a particular matter exists or does not exist.

198. The Guide sets out circumstances in which an offence-specific defence is appropriate. These include where it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. The Guide also provides such defences may be appropriate where the matter is peculiarly within the knowledge of the defendant.

Division 114C—General provisions relating to offences

199. Division 114C would insert provisions relating to the application of new Part 5.3B, including geographical jurisdiction and alternative verdicts available for offences under Division 114B.

Section 114C.1—Extended geographical jurisdiction for offences

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200. Section 114C.1 applies extended geographical jurisdiction category B under section 15.2 of the Criminal Code to an offence against Division 114B. As a result of the application of geographical jurisdiction category B, an offence would apply:

- if the conduct constituting the alleged offence occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft or ship

- if the conduct constituting the alleged offence occurs wholly outside Australia and a result of that conduct occurs wholly or partly in Australia, or wholly or partly on board an Australian aircraft or ship

- if the conduct constituting the alleged offence occurs wholly outside Australia and at the time of committing the alleged offence, the person is an Australian citizen or resident, or a body corporate incorporated by or under the legislation of a Commonwealth, State or Territory jurisdiction, or

- if the alleged offence is an ancillary offence and occurs wholly outside Australia, and the conduct constituting the primary offence, or a result of that conduct, occurs, or is intended to occur, wholly or partly in Australia, or wholly or partly on board an Australian aircraft or ship.

201. This would ensure that only conduct, and any consequences resulting from the conduct, that occurs in Australia or engaged in by Australian citizens, residents or bodies corporate is captured. This is conduct which is most likely to affect the health and safety of the Australian community.

202. Subsections 15.2(2) and (4) of the Criminal Code provide for a defence to conduct captured by subsection 15.2(1). A person does not commit an offence if:

- the conduct constituting the alleged offence occurs wholly in a foreign country, but not on board an Australian aircraft or ship, and

- the person is neither an Australian citizen nor a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory, and

- there is not in force in the foreign country where the conduct constituting the offences occurs, a law of that foreign country that also creates an offence for that conduct.

203. The defendant bears the evidential burden in relation to subsections 15.2(2) and (4). The reversal of the evidential burden of proof is consistent with section 13.3 of the Criminal Code. Under subsection 13.3(3), a defendant who wishes to rely on an exception or defence bears the evidential burden in relation to that defence or exception. This requires the defendant to adduce or otherwise point to evidence that suggests a reasonable possibility that a particular matter exists or does not exist.

204. The Guide sets out circumstances in which an offence-specific defence is appropriate. These include where it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. The Guide also provides such defences may be appropriate where the matter is peculiarly within the knowledge of the defendant.

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Section 114C.2—Alternative verdicts

205. Subsection 114C.2(1) would provide for alternative verdicts to be pursued where the initial offence is not made out during prosecution for offences under Division 114B. This allows the trier of fact to find a defendant guilty of an alternative offence where they are not satisfied that the defendant is guilty, beyond a reasonable doubt, of the initially prosecuted offence, but are satisfied beyond reasonable doubt that the defendant is guilty of an offence against another subsection of the section.

206. An example of an alternative verdict is as follows. A person is initially prosecuted for an offence of directing the activities of a prohibited hate group against new subsection 114B.1(1), but the fault element of knowledge cannot be made out under paragraph 114B.1(1)(c). Instead, the person could be found guilty under subsection114B.1(2), if the fault element of recklessness under paragraph 114B.1(2)(c) could be satisfied.

207. Subsection 114C.2(2) would provide for an appropriate safeguard that the defendant could only be found guilty of the alternative offences if the defendant had been accorded procedural fairness in relation to that finding of guilt.

Division 2 – Consequential amendments

Australian Citizenship Act 2007

Item 14: Section 3 (paragraph (cb) of the definition of *national security offence*)

208. Item 14 would insert a reference to new Part 5.3B (prohibited hate groups) in paragraph (cb) of the definition of 'national security offence' for the purposes of the Act. The effect of this amendment is that a conviction for offences under Part 5.3B are grounds for the Minister to not approve a person becoming an Australian citizen under the Citizenship Act.

209. Under section 16 of the Citizenship Act, a person may make an application to the Minister to become an Australian citizen. The Minister may then make a decision under section 17 whether to approve or refuse the person becoming an Australian citizen. Section 17 provides for specific national security grounds that require the Minister to not approve the citizenship application. Relevant in this context is subsection 17(4A) which provides that, subject to subsection 17(4B), the Minister must not approve the person becoming an Australian citizen if the person has been convicted of a national security offence. This would require the Minister to refuse a citizenship application if the person has been convicted of an offence under Part 5.3B of the Criminal Code.

210. The conduct engaged in by prohibited hate groups is hateful and oftentimes violent, and the amplification of hate threatens the lives and safety of Australians. This amendment is appropriate in order to protect the Australian community from the values, beliefs and actions of prohibited hate groups which are unwelcome and unacceptable in Australia.

Australian Security Intelligence Organisation Act 1979

Item 15: After paragraph 35(2)(c)

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211. Item 15 would insert new paragraph 35(2)(ca) which would provide that providing advice to the AFP Minister under section 114A.5 of the Criminal Code (specifying an organisation as a prohibited hate group) is not a prescribed administrative action. Under new section 114A.5, the Director-General may provide written advice to the AFP Minister recommending that the AFP Minister consider whether an organisation should be specified as a prohibited hate group.

212. This amendment will ensure that the provision of advice by the Director-General of Security in relation to the specification of an organisation as a prohibited hate group, is not a prescribed administrative action for the purposes of the ASIO Act.

Criminal Code Act 1995

Item 16: After paragraph 5(2)(fa)

213. Item 16 would insert new paragraph 5(2)(fb) which would provide that for the purposes of the *Legislation Act 2003*, the Minister administering the AFP Act is the rule maker for regulations made for the purposes of Part 5.3B. This would ensure that the rule maker for regulations under Part 5.3B is the AFP Minister, not the Attorney-General who currently administers the Criminal Code, for the purposes of the Legislation Act.

214. This is consistent with the AFP Minister being the rule maker for regulations made for the purpose of Part 5.3 and Part 5.3A of the Criminal Code.

Legislation (Exemptions and Other Matters) Regulation 2015

Item 17: Section 12 (after table item 18D)

215. Item 17 would insert new table item 18E in section 12 of the Legislation (Exemptions and Other Matters) Regulations 2015 (LEOM Regulations), after table item 18D.

216. Section 12 provides for particular legislative instruments that are not subject to sunsetting. The effect of this item would be to exempt regulations made under subsection 114A.4(1) from the default sunsetting period established in the Legislation Act.

217. This provision would have the effect of exempting the default 10-year sunsetting period for regulations contained in subsection 50(1) of the Legislation Act from applying to regulations which specify prohibited hate groups. Under subsection 54(2) of the Legislation Act, sunsetting does not apply to legislative instruments that are prescribed by regulation for the purpose of paragraph 54(2)(b). Section 12 of the LEOM Regulations is made for this purpose.

218. As a result of this amendment, regulations which specify a prohibited hate group would not cease unless a decision has been taken by the AFP Minister under section 114A.8 of the Criminal Code. Under that section, the AFP Minister must make a declaration, which has the effect of ceasing the effect of the listing regulation, if the Minister ceases to be satisfied that it is reasonably necessary for the organisation to be listed to prevent harm of any kind referred to in paragraph 114A.1(a).

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219. This is appropriate given the safeguards in place to ensure prohibited hate groups are reviewed and remain appropriate. The instrument specifying a prohibited hate group would also be subject to disallowance. Safeguards will remain in place following this period as a result of the expanded parliamentary oversight provided by the empowering of the PJCIS to conduct own-motion review into listings instruments at any time. These reviews provide an independent, continuous rather than periodic, review mechanism to ensure the listing of a prohibited hate group remains in force only as long as is appropriate.

220. Prohibited hate group pose a grave threat to Australia's social cohesion and the protection of the broader community from hate motivated threats and violence. It is therefore appropriate that the relevant regulations cease to have effect only following an active decision of the Minister rather than by automatic effect of the Legislation Act.

221. This would also align the prohibited hate group framework with the terrorist organisations and state sponsors of terrorism frameworks. Regulations under both frameworks are exempt from sunsetting in recognition of their ongoing threat to Australia's security.

Surveillance Devices Act 2004

Item 18: Subparagraphs 30(1)(a)(viii) and (1A)(a)(iv)

222. Item 18 would insert a reference to new Division 114B into subparagraphs 30(1)(a)(viii) and 30(1A)(a)(iv). Section 30 of the Act provides for the granting of emergency authorisations where there is a risk of loss of evidence.

223. This amendment would permit law enforcement officers to apply for emergency authorisations for the use of a surveillance device, and access to data held on computers, when investigating an offence under Division 114B.

224. This is appropriate because the conduct of prohibited hate groups is carefully planned and coordinated, aimed at avoiding overtly criminal activity, requiring agencies to be able to use surveillance devices to gather intelligence and investigate this offending. The activities of prohibited hate groups can cause grave harm to individuals, as well as broader social harm where it is directed at a particular community or undertaken for purposes that include causing harm to social cohesion and raising communal tension.

Telecommunications (Interception and Access) Act 1979

Item 19: Subsection 5D(1) (after subparagraph (vd) of the definition of *serious offence*)

225. Item 19 would insert new subparagraph 5D(1)(ve) which would amend the definition of a 'serious offence' in section 5D of the *Telecommunications (Interception and Access) Act 1979* to include the new offences in Division 114B. The effect of the amendment would be to permit agencies to apply for warrants authorising the interception of telecommunications and access to stored communications, in order to obtain information that may be likely to assist in the investigation of an offence under new Division 114B.

226. The definition of 'serious offence' in section 5D lists offences relating to specified categories of criminal conduct that are generally punishable by a maximum penalty of at

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least seven years' imprisonment. It also includes a limited range of offences that carry a maximum penalty of less than seven years' imprisonment, where the offence is connected to a serious offence or involves associating with those committing serious offences (subsection 5D(6)-(8A)) or where telecommunications play an important role in the commission of the offence (such as cybercrime offences). All of the new offences in Division 114B have terms of imprisonment of 7 years or greater.

227. The new Division 114B offences are of a similar character to the offences that are currently listed in section 5D. Conduct by prohibited hate groups involves significant planning and coordination, aimed at avoiding overtly criminal activity, requiring agencies to be able to covertly access communications of persons involved. Hate crimes can also cause grave harm to individuals, including significant injury, as well as broader social harms where it is directed at particular communities or undertaken for purposes that include causing harm to social cohesion or raising communal tension.

Part 5 – Racial vilification offence

Criminal Code Act 1995

Item 20 Paragraph 80.2BE(1)(d) of the *Criminal Code*

228. Item 20 inserts the word ", or national" after "religion" in paragraph 80.2BE(1)(d) so that the paragraph would read:

- the targeted group is distinguished by race, religion, or national or ethnic origin.

229. This creates greater consistency in the terminology used across relevant offences.

Item 21 Paragraph 80.2BE(2)(d) of the *Criminal Code*

230. Item 21 inserts the word ", or national" after "religion" in paragraph 80.2BE(2)(d) so that the paragraph would read:

- the targeted group is distinguished by race, religion, or national or ethnic origin.

231. This creates greater consistency in the terminology used across relevant offences.

Item 22 After section 80.2BE of the *Criminal Code*

232. This item would insert a new offence after section 80.2BE of the Criminal Code relating to the promotion or incitement of hatred, or dissemination of ideas of superiority, based on race, colour or national or ethnic origin.

233. The harm caused by the promotion or incitement of hatred can be profound – it constitutes an attack on the dignity of targeted groups, and members of those groups, which affects the physical and psychological wellbeing not only of those targeted, but of the whole community. By prohibiting this conduct, the offence seeks to protect the ability of groups distinguished by race, colour or national or ethnic origin, and members of such groups, to participate safely in society without intimidation or fear of harassment or violence, or to fear for their safety.

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234. The recent terrorist attack at Bondi Beach on 14 December 2025 tragically demonstrated how ideologies rooted in antisemitism and hatred can manifest in catastrophic violence. This conduct does not occur in isolation. It often begins with dehumanising rhetoric and escalates over time into acts that threaten lives, national security and social cohesion. Targeted communities have been subjected to vilification which erodes their safety and dignity, inflames community tensions and fosters grievance narratives that extremists seek to exploit. This conduct threatens the safety of the Australian community and prevents targeted groups and their members from fully and safely participating in our democracy and society. Conduct of this kind also poses challenges to Australia's security. It can exacerbate the influence of diverse extremist ideologies and promote further radicalisation. By criminalising the incitement or promotion of this hatred, these offences seek to prevent more serious offending, including advocating or threatening force or violence against groups, members of groups and their property, by deterring precursor behaviour and enabling law enforcement to intervene before this conduct escalates.

235. The new offence also seeks to prohibit conduct which is intended to disseminate ideas of superiority. These ideas are tools used by extremists to dehumanise groups on the basis of their race, colour, national or ethnic origin by communicating to those groups that they are inferior, and that promotes hatred, community division and social ostracisation. This conduct can undermine community respect and understanding and radicalise individuals to extremism and violence.

236. The new offences would complement existing civil protections and criminal offences by criminalising conduct that is more serious that conduct prohibited by section 18C of the *Racial Discrimination Act 1975*, but that does not meet the threshold for advocating or threatening violence against groups, members of groups and their property in sections 80.2A to 80.2BE of the Criminal Code.

237. The new offence would also complement existing vilification offences in some states and territories. It would provide consistent national coverage, noting that not all jurisdictions have offences in relation to conduct of this nature. The new offence would fill a gap in the existing Commonwealth legal framework by criminalising conduct which falls short of advocating or threatening violence but is more serious than merely causing offence. Conduct which is merely offensive, insulting or humiliating would not be criminalised by these offences, but may be captured by civil protections.

238. Further, the new offence in section 80.2BF would further implement Australia's obligations under Article 4(a) of the *Convention on the Elimination of All Forms of Racial Discrimination.*

239. New subsection 80.2BF(1) would provide that a person commits an offence if:

- the person engages in conduct in a public place (paragraph 80.2BF(1)(a)); and
- the person engages in the conduct intending to:
    - promote or incite hatred of another person (the *target*) or a group of persons (the *target group*), because of the race, colour or national or ethnic origin of the target or target group (subparagraph 80.2BF(1)(b)(i)); or

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- disseminate ideas of superiority over or hatred of another person (the *target*), or a group of persons (the *target group*) because of the race, colour or national or ethnic origin of the target or target group (subparagraph 80.2BF(1)(b)(ii)); and

- the conduct would, in all the circumstances, cause a reasonable person who is the target, or a member of the target group, to be intimidated, to fear harassment or violence, or to fear for their safety (paragraph 80.2BF(1)(c)).

240. The maximum penalty for this offence would be 5 years imprisonment. This penalty is appropriate because promoting or inciting hatred of groups distinguished by race is a serious, intentional act that causes significant harm to these groups and to the Australian community more broadly, including by undermining community respect and understanding and increasing the risk of radicalisation to violence. This maximum penalty would account for the severity of offending, noting the deterrent and early intervention objectives of the offence.

241. New paragraph 80.2BF(1)(a) would establish the physical conduct element of the offence, namely that the person engages in conduct in a public place. The term 'engages in conduct' is defined in section 4.1 of the Criminal Code to mean to do an act or omit to perform an act. The conduct must be engaged in intentionally. Intention is defined in section 5.2 of the Criminal Code. Paragraph 80.2BF(1)(a) would also provide that the conduct must be engaged in in a public place. As this is a circumstance, the applicable fault element is recklessness. Recklessness is defined in section 5.4 of the Criminal Code. The meaning of engages in conduct in a public place is clarified in subsection 80.2BF(7), which is discussed further below.

242. The requirement that the conduct occurs in public is intended to recognise that promoting or inciting hatred in public causes significant harm to the community through direct exposure and normalisation of hateful and extremist narratives. This normalisation in turn increases the risk of radicalisation of community members to discriminatory ideologies or damaging actions.

243. New paragraph 80.2BF(1)(b) provides that the person must have engaged in the conduct intending to either:

- promote or incite hatred of another person (the target) or a group of persons (the target group), because of the race, colour or national or ethnic origin of the target or target group (subparagraph 80.2BF(1)(b)(i)); or

- disseminate ideas of superiority over or hatred of another person (the target), or a group of persons (the target group) because of the race, colour or national or ethnic origin of the target or target group (subparagraph 80.2BF(1)(b)(ii)).

244. The phrase ***promote or incite*** is intended to cover a broad range of conduct which encourages others to adopt hatred of groups, or members of groups, distinguished by race, colour or national or ethnic origin. The words would take their ordinary meaning.

245. ***Promote*** is intended to refer to conduct which encourages, advocates or endorses hatred even if it does not directly urge others to act. Promotion would include normalising or legitimising hateful attitudes in public discourse. For example, publishing material that

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glorifies hatred of ethnic groups or presenting racist ideologies as acceptable would be likely to constitute promotion. This would reflect the harm which is caused by normalising discourse which encourages hostility towards racial groups and is seen as reasonable or justified.

246. ***Incite*** is intended to refer to conduct that urges, provokes or stimulates others to adopt or act on hateful attitudes or ideologies. Incitement would capture conduct which attempts to move others toward hate, ostracisation or encouragement for others to treat members of a racial group with hatred.

247. The term ***hatred*** would also take its ordinary meaning, including a feeling of hostility, strong aversion toward a person, or serious contempt. This is distinct from lesser forms of animosity, such as irritation or prejudice. Hatred is intended to involve a level of passion or commitment that can motivate harmful actions or speech.

248. The term ***disseminate*** would take its ordinary meaning. It is intended to capture conduct which includes publishing, broadcasting, distributing or otherwise making available ideas or material which conveys ideas of superiority over or hatred of a group distinguished by race, colour or national or ethnic origin to the public. This can occur, for example, through speeches, printed publication, online posts, videos, podcasts or graffiti.

249. New subparagraph 80.2BF(1)(b)(ii) is intended to include dissemination of ideas which assert that one group, distinguished by race, colour, national or ethnic origin, is inherently superior or inferior to another, ideas promoting exclusion, segregation or denial of rights based on race, colour or national or ethnic origin or encouraging contempt, hostility or dehumanisation of those groups.

250. The fault element of intention would apply to the conduct in these subparagraphs by application of section 5.2 of the Criminal Code. This requires that the person meant to promote or incite hatred of a group, or disseminate ideas of superiority over, a person or group because of their race, colour, or national or ethnic origin or is aware that will occur in the ordinary course of events. If, for example, a person merely expressed a view that is contrary to the beliefs of some of most people in a particular racial group but did not mean for that expression to promote or incite hatred against that racial group, this would not satisfy the fault element for this element.

251. New paragraph 80.2BF(1)(c) would establish the final element of the offence, namely that the conduct would cause a reasonable person who is the target, or a member of the target group, to be intimidated, to fear harassment or violence, or to fear for their safety. This element ensures that subsection 80.2BF(1) does not criminalise conduct that promotes or incites hatred or disseminates ideas of superiority or hatred, unless the conduct would cause a reasonable person of a targeted group to be intimidated, to fear harassment or violence, or to fear for their safety.

252. The offences are designed to extend protections to targeted groups from conduct which would significantly impact their ability to participate in society. The robust expression of diverse opinions is an important feature of Australian democracy, and the offence seeks to respect the need for vibrant public debate by not criminalising the mere expression of belief or opinion. It would criminalise the most serious kind of hateful communication and conduct – those that impact the targeted groups perception of safety.

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253. The reasonable person test in paragraph 80.2BF(1)(c) means that it would not be necessary for the prosecution to prove that the threat actually had the effect of causing a member of the targeted group to be intimidated, to fear harassment or violence or to fear for their safety. The fact that the conduct would have this effect on a reasonable person who is a member of a group distinguished by race, colour or national or ethnic origin would be sufficient. This is designed to direct the court to consider the experiences, perspectives and characteristics of a person with the lived experience of a person distinguished by race, colour or national or ethnic origin in determining whether it would be reasonable that the person was intimidated or feared harassment, violence or for their safety. This is intended to acknowledge the unique experiences of members of these groups, which may include historical oppression and the experience of being a marginalised community.

254. New paragraph 80.2BF(1)(c) also requires that the conduct would have that impact on a reasonable person, in all the circumstances. This reference to all the circumstances, is intended to ensure that the full context of the offending is taken into account. This would include consideration of the cumulative effect of events on the targeted group, including conduct engaged in by persons other than the offender.

255. The example at the end of subsection 80.2BF(1) would explicitly clarify that the offence would target the incitement of antisemitic hatred against Jews in a public place where a reasonable member of the Jewish community would be intimidated or fear violence.

256. New subsection 80.2BF(2) would provide that strict liability, as outlined in section 6.1 of the Criminal Code, would apply to the circumstance in new paragraph 80.2BF(1)(c). The effect of strict liability is that the prosecution is not required to prove intention, knowledge, recklessness, negligence or any other kind of fault element in relation to the circumstance in paragraph 80.2BF(1)(c). This is appropriate as the state of mind of the defendant is irrelevant to the matter in this paragraph, which relates to whether the conduct would cause a reasonable person who is a member of the target group, or a member of the target group, to be intimidated, to fear harassment or violence or to fear for their safety.

257. It will still be open to the defendant to raise a mistake of fact under section 9.2 of the Criminal Code. Section 9.2 provides that a person will not be criminally responsible if the person was under a mistaken but reasonable belief about those facts and if those facts had existed, the conduct would not have constituted an offence. The mistake must be one which is reasonable for the defendant to make in the circumstances. The defence of mistake of fact will not apply in circumstances where the mistake results from a lack of awareness of relevant facts.

258. New paragraph 80.2BF(3)(a) would provide that, for the purposes of subsection 80.2BF(1), it is immaterial whether the target, or members of the target group, actually are distinguished by the particular race, colour or national or ethnic origin. This is intended to reflect that the relevant factor is that the person who engaged in the conduct *believed* the targeted person was a member of a group, or the target was a group distinguished by race, colour or national or ethnic origin, regardless of whether the target was in fact distinguished by race, colour or national or ethnic origin. This would ensure that criminal liability does not depend on the accuracy of the offender's assumption about the target's race. For example, if a person publicly incites hatred against someone they

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believe to be of a particular national or ethnic background, the offence will still apply even if that targeted person is not actually of that background.

259. New paragraph 80.2BF(3)(b) would provide that, for the purposes of subsection 80.2BF(1), it is immaterial whether the conduct actually results in hatred of another person or groups of persons. This is intended to reflect that the relevant factor for establishing the offence is the person's intention when engaging in the conduct, not whether the conduct achieves its intended effect. This would recognise that the purpose of the offence is to criminalise publicly promoting or inciting hatred which can cause significant harm to those targeted, and the broader Australian community, regardless of whether it successfully causes others to adopt hateful views.

260. New paragraph 80.2BF(3)(c) would provide that, for the purposes of subsection 80.2BF(1), it is immaterial whether the conduct actually results in any person feeling intimidated, fearing harassment or violence, or fearing for their safety. Subparagraph 80.2BF(1)(c) focuses on the impact on a reasonable person who is the target, or a member of the target group. Therefore, it is not necessary to find an actual member of the targeted group that the conduct caused to feel this way.

261. New subsection 80.2BF(4) would provide that subsection 80.2BF(1) does not apply to conduct that consists only of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion. This defence is intended to protect freedom of religion.

262. The term ***religious text*** is intended to take its ordinary meaning and include scripture, and translations of texts, which various religions consider to be of central importance to their religious practice.

263. The requirement that the conduct consists only of directly quoting from, or otherwise referencing, a religious text would limit the scope of the defence to circumstances where the person's conduct is limited to quoting or referencing (such as paraphrasing) the text itself. It is also required that the conduct occur in the course of, and for the purposes of, religious teaching or discussion. For example, reading a passage from religious scripture during a sermon or study group for the purpose of theological discussion could fall within the defence. However, quoting a religious text and then sharing an interpretation of that text to encourage listeners to act with hostility toward a racial group would not. The quoting, or interpretation of the text, needs to be sufficiently connected to the religious text to ensure the defence cannot be misused to excuse conduct which goes beyond genuine religious teaching or discussion and is instead intentionally used to cause harm.

264. The note at the end of subsection 80.2BF(4) would clarify that the defendant bears an evidential burden in relation to the defence in that subsection in accordance with existing subsection 13.3(3). Subsection 13.3(3) provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.

265. The Guide sets out the circumstances in which an offence-specific defence is appropriate. These include where there are matters which are peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

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266. It would not be reasonable to require the prosecution to prove the matters set out in subsection 80.2BF(4). The defence would rely on the purpose for which the person engaged in the conduct, which is likely to be peculiarly within the knowledge of the defendant and significantly more difficult for the prosecution to prove. The offence-specific defence recognises that the defendant's purpose in quoting or referencing a religious text is uniquely within the knowledge of the defendant and cannot be readily inferred from external circumstances. The defendant is best placed to adduce evidence demonstrating their purpose, including for example evidence about the religious text they were quoting.

267. New subsection 80.2BF(5) would provide that, after the end of the 2-year period beginning on the day this section commences, the Minister must cause a review to be conducted of section 80.2BF. This would enable consideration of the effectiveness of the offences and any unintended consequences.

268. New subsection 80.2BF(6) would provide that the Minister must cause copies of any report of the review that is given to the Minister to be tabled in each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

269. New subsection 80.2BF(7) would clarify the meaning of the term and 'engages in conduct in a public place' and the circumstances in which the offence in subsection 80.2BF(1) would apply. The definition is not intended to limit the circumstances in which a person could engage in conduct in a public place but would provide examples of the broad range of conduct is intended to be captured by the offence.

270. New paragraph 80.2BF(7)(a) would clarify that a person engages in conduct in a public place if the person communicates to the public using any form of communication. This would include speaking, writing, displaying notices, graffiti, playing of recorded material, broadcasting and communicating through social media and other electronic methods. This is intentionally broad to cover verbal communication, audiovisual methods and conduct online, including on social media, blogs and other electronic platforms.

271. New paragraph 80.2BF(7)(b) would clarify that a person engages in conduct in a public place if the person engages in any conduct (including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia) that is observable to the public. This would clarify that the concept of conduct in a public place includes physical actions and visible expressions that the public can observe.

272. New paragraph 80.2BF(7)(c) would clarify that a person engages in conduct in a public place if the person distributes or disseminates any matter to the public. This would capture handing out flyers, pamphlets or other physical materials or distributing material online including through posting downloadable content in a public place online.

273. Subsection 80.2BF(7) would also clarify that a person may engage in conduct in a public place even if the conduct occurs on private land. This reflects the intention that conduct which is capable of being seen or heard by a member of the public who is in a public place would still fall within the scope of the offence. For example, if a person broadcasts a livestream from their home or displays offensive material on private property that is visible to the public, the offence will still apply.

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274. The note at the end of the paragraph 80.2BF(7)(b) would direct the reader to the definition of 'public place' in the Criminal Code Dictionary where the term is defined to include any place to which the public, or a section of the public, have access as of right or by invitation, whether express or implied, and whether or not a charge is made for admission to the place.

275. New subsection 80.2BF(7) would clarify the meaning of the word 'fear' for the purposes of the offence in subsection 80.2BF(1). 'Fear' would include apprehension. This is intended to recognise that fear can manifest in various forms, including the anticipation of harm.

276. New subsection 80.2BF(8) would clarify that, for the purposes of the section, the terms ***race***, ***colour***, and ***national or ethnic origin*** have the same meanings as in the *Racial Discrimination Act 1975*.

Item 23 After paragraph 80.3(2)(b) of the *Criminal Code*

277. This item would insert two additional paragraphs into subsection 80.3(2) of the Criminal Code. Subsection 80.3(2) includes a number of matters to which a court may have regard in determining whether the defence for acts in good faith applies. The defence ensures that the offences in Division 80 to which the defence applies do not capture circumstances in which conduct is engaged in in good faith, for example, in the course of robust political communication, including calls to change the law of the Commonwealth, or in the dissemination of news or current affairs, which are important pillars of our democracy. The defence ensures that the offences do not have a greater deterrent effect on communication than is necessary for its purpose and does not unduly impinge on Australians' ability to engage freely in political communication.

278. New paragraph 80.3(2)(c) would provide that, in considering a defence under subsection 80.3(1), the court may have regard to any relevant matter, including whether the acts were done with the intention of promoting or inciting hatred of another person or group of persons, because of the race, colour or national or ethnic origin of that person or group.

279. New paragraph 80.3(2)(d) would provide that, in considering a defence under subsection 80.3(1), the court may have regard to any relevant matter, including whether the acts were done with the intention of disseminating ideas of superiority over or hatred of another person, or a group of persons, because of the race, colour or national or ethnic origin of the other person or group.

280. These new paragraphs are intended to ensure that the defence in subsection 80.3(1) is limited to circumstances in which the conduct was engaged in for a genuinely legitimate purpose and cannot be misused to excuse hateful conduct even if presented as, for example, political discussion. It reflects the policy intention that the defence for acts in good faith would not apply to conduct that seeks to spread ideologies of hatred or disseminate ideas of superiority over groups or members of groups distinguished by race, colour or national or ethnic origin, as such acts cannot be done in good faith. Including these matters in subsection 80.3(2) would provide clear guidance to the court that the defence is limited to legitimate purposes.

Item 24 After paragraph 80.4(2)(ce) of the *Criminal Code*

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281. This item would insert '(cf) subsection 80.2BF(1); or' after paragraph 80.4(2)(ce) of the Criminal Code. This would apply category B geographical jurisdiction, as outlined in section 15.2 of the Criminal Code, to the new offence in subsection 80.2BF(1) through the operation of subsection 80.4(2) as amended. Category B geographical jurisdiction enables an offence to operate:

- when the conduct constituting the alleged offence occurs wholly or partly either in Australia; or wholly or partly on board an Australian aircraft or ship (paragraph 15.2(1)(a) of the Criminal Code), or

- when the conduct constituting the alleged offence occurs wholly outside Australia and a result of that conduct occurs either wholly or partly in Australia, or wholly or partly on board an Australian aircraft or an Australian ship (paragraph 15.2(1)(b) of the Criminal Code), or

- when the conduct constituting the alleged offence occurs wholly outside Australia and at the time of the alleged offence, the defendant is an Australian citizen, an Australian resident or a body corporate incorporated under Australian law (paragraph 15.2(1)(c) of the Criminal Code); or

- the alleged offence is an ancillary offence; and the conduct constituting the alleged offence occurs wholly outside Australia; and the conduct constituting the primary offence to which the ancillary offence relates, or as a result of that conduct, occurs, or is intended by the person to occur, wholly or partly in Australia or wholly or partly on board an Australian aircraft or ship (paragraph 15.1(1)(d) of the Criminal Code).

282. Section 15.2 provides certain defences to extraterritorial application.

Part 6 – Aggravated grooming offence

283. Australia's Counter-Terrorism and Violent Extremism Strategy 2025 recognises that the growth in the number of young people engaging in violent extremist ideologies continues to be a concerning feature of Australia's security environment. Since the start of 2024, there has been a resurgence in young people in ASIO and AFP priority counter-terrorism caseloads. The number of young clients in Australia's violent extremism intervention programs also continues to grow.

284. Violent extremists often exploit vulnerabilities to appeal to, recruit and radicalise others. Becoming involved in violent extremism is inherently harmful for young people, potentially socialising them to attitudes and beliefs that negatively impact the quality of their social relationships, their general wellbeing, and their future employability. It may also result in young people committing a variety of offences.

285. The proposed new aggravated offences in Part 6 of the Bill are intended to limit the spread of hateful ideology to children. Adults whose criminal conduct is intended to influence the actions of children would be subject to more severe penalties.

Item 25 Subsection 80.2A(1) of the *Criminal Code* (penalty and note)

286. Item 25 would repeal the penalty and note to subsection 80.2A(1) and substitute it with a new penalty and explanatory notes.

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287. Note 1 at the end of subsection 80.2A(1) would direct readers to the definition of 'intention' in section 5.2 of the Criminal Code, and the definition of 'recklessness' in section 5.4 of the Criminal Code. This would reflect that the fault element attached to paragraph 80.2A(1)(a) is intention, as defined in section 5.2 of the Criminal Code, and the fault element attached to paragraph 80.2A(1)(b) is recklessness, as defined in section 5.4 of the Criminal Code. The Bill does not amend these fault elements, but simply renumbers the note to accommodate the second additional note.

288. Note 2 at the end of subsection 80.2A(1) signpost the new aggravated offences if the person is a religious official or other spiritual leader etc. (by operation of new section 80.2DA, described in item 7 of Schedule 1, Part 1 of the Bill) or where the advocacy is directed at a person less than 18 years old (by operation of new section 80.2DB, described in item 31 of Schedule 1, Part 6 of the Bill).

289. The maximum penalty for the offence in subsection 80.2A(1) would be increased from 7 years imprisonment to 10 years imprisonment. The increase in penalty would more appropriately account for the potential severity of offending under subsection 80.2A(1).

Item 26 Subsection 80.2A(2) of the *Criminal Code* (penalty and note)

290. Item 26 would repeal the penalty and note at subsection 80.2A(2) and substitute it with a new penalty and explanatory notes.

291. Note 1 at the end of subsection 80.2A(1) would direct readers to the definition of 'intention' in section 5.2 of the Criminal Code, and the definition of 'recklessness' in section 5.4 of the Criminal Code. This would reflect that the fault element attached to paragraph 80.2A(2)(a) is intention, as defined in section 5.2 of the Criminal Code, and the fault element attached to paragraph 80.2A(2)(b) is recklessness, as defined in section 5.4 of the Criminal Code. The Bill does not amend these fault elements, but simply renumbers the note to accommodate the second additional note.

292. Note 2 at the end of subsection 80.2A(2) would signpost the new aggravated offences if the person is a religious official or other spiritual leader etc. (by operation of new section 80.2DA, described in item 7 of Schedule 1, Part 1 of the Bill) or where the advocacy is directed at a person less than 18 years old (by operation of new section 80.2DB, described in item 31 of Schedule 1, Part 6 of the Bill).

293. The maximum penalty for the offence in subsection 80.2A(2) would be increased from 5 years imprisonment to 7 years imprisonment. The increase in penalty would more appropriately account for the potential severity of offending under subsection 80.2A(2).

Item 27 Subsection 80.2B(1) of the *Criminal Code* (penalty and note)

294. Item 27 would repeal the penalty and note at subsection 80.2B(1) and substitute it with a new penalty and explanatory notes.

295. Note 1 at the end of subsection 80.2B(1) would direct readers to the definition of 'intention' in section 5.2 of the Criminal Code, and the definition of 'recklessness' in section 5.4 of the Criminal Code. This would reflect that the fault element attached to paragraph 80.2B(1)(a) is intention, as defined in section 5.2 of the Criminal Code, and the fault element attached to paragraph 80.2B(1)(b) is recklessness, as defined in section 5.4

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of the Criminal Code. The Bill does not amend these fault elements, but simply renumbers the note to accommodate the second additional note.

296. Note 2 at the end of subsection 80.2B(1) would signpost the new aggravated offences if the person is a religious official or other spiritual leader etc. (by operation of new section 80.2DA, described in item 7 of Schedule 1, Part 1 of the Bill) or where the advocacy is directed at a person less than 18 years old (by operation of new section 80.2DB, described in item 31 of Schedule 1, Part 6 of the Bill).

297. The maximum penalty for the offence in subsection 80.2B(1) would be increased from 7 years imprisonment to 10 years imprisonment. The increase in penalty would more appropriately account for the potential severity of offending under subsection 80.2B(1).

Item 28 Subsection 80.2B(2) of the *Criminal Code* (penalty and note)

298. Item 28 would repeal the penalty and note at subsection 80.2B(2) and substitute it with a new penalty and explanatory notes.

299. Note 1 at the end of subsection 80.2B(2) would direct readers to the definition of 'intention' in section 5.2 of the Criminal Code, and the definition of 'recklessness' in section 5.4 of the Criminal Code. This would reflect that the fault element attached to paragraph 80.2b(1)(a) is intention, as defined in section 5.2 of the Criminal Code, and the fault element attached to paragraph 80.2A(1)(b) is recklessness, as defined in section 5.4 of the Criminal Code. The Bill does not amend these fault elements, but simply renumbers the note to accommodate the second additional note.

300. Note 2 at the end of subsection 80.2B(2) would signpost the new aggravated offences if the person is a religious official or other spiritual leader etc. (by operation of new section 80.2DA, described in item 7 of Schedule 1, Part 1 of the Bill) or the where the advocacy is directed at a person less than 18 years old (by operation of new section 80.2DB, described in item 31 of Schedule 1, Part 6 of the Bill).

301. The maximum penalty for the offence in subsection 80.2B(2) would be increased from 5 years imprisonment to 7 years imprisonment. The increase in penalty would more appropriately account for the potential severity of offending under subsection 80.2B(2).

Item 29 Subsection 80.2BC(1) of the *Criminal Code* (penalty and note)

302. Item 29 would repeal the penalty and note at subsection 80.2BC(1) and substitute it with a new penalty and explanatory notes.

303. Note 1 at the end of subsection 80.2BC(1) would direct readers to the definition of 'intention' in section 5.2 of the Criminal Code, and the definition of 'recklessness' in section 5.4 of the Criminal Code. This would reflect that the fault element attached to paragraph 80.2BC(1)(a) is intention, as defined in section 5.2 of the Criminal Code, and the fault element attached to paragraph 80.2BC(1)(b) is recklessness, as defined in section 5.4 of the Criminal Code. The Bill does not amend these fault elements, but simply renumbers the note to accommodate the second additional note.

304. Note 2 at the end of subsection 80.2BC(1) would signpost the new aggravated offences if the person is a religious official or other spiritual leader etc. (by operation of new

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section 80.2DA, described in item 7 of Schedule 1, Part 1 of the Bill) or where the advocacy is directed at a person less than 18 years old (by operation of new section 80.2DB, described in item 31 of Schedule 1, Part 6 of the Bill).

305. The maximum penalty for the offence in subsection 80.2BC(1) would be increased from 7 years imprisonment to 10 years imprisonment. The increase in penalty would more appropriately account for the potential severity of offending under subsection 80.2B(1).

Item 30 Subsection 80.2BC(2) of the *Criminal Code* (penalty and note)

306. Item 30 would repeal the penalty and note at subsection 80.2BC(2) and substitute it with a new penalty and explanatory notes.

307. Note 1 at the end of subsection 80.2BC(2) would direct readers to the definition of 'intention' in section 5.2 of the Criminal Code, and the definition of 'recklessness' in section 5.4 of the Criminal Code. This would reflect that the fault element attached to paragraph 80.2BC(2)(a) is intention, as defined in section 5.2 of the Criminal Code, and the fault element attached to paragraph 80.2BC(2)(b) is recklessness, as defined in section 5.4 of the Criminal Code. The Bill does not amend these fault elements, but simply renumbers the note to accommodate the second additional note.

308. Note 2 at the end of subsection 80.2BC(2) would signpost the new aggravated offences if the person is a religious official or other spiritual leader etc. (by operation of new section 80.2DA, described in item 7 of Schedule 1, Part 1 of the Bill) or where the advocacy is directed at a person less than 18 years old (by operation of new section 80.2DB, described in item 31 of Schedule 1, Part 6 of the Bill).

309. The maximum penalty for the offence in subsection 80.2BC(2) would be increased from 5 years imprisonment to 7 years imprisonment. The increase in penalty would more appropriately account for the potential severity of offending under subsection 80.2BC(2).

Item 31 Subsection 80.2BE(1) of the *Criminal Code* (penalty and note)

310. Item 31 would repeal the penalty and note at subsection 80.2BE(1) and substitute it with a new penalty and explanatory notes.

311. Note 1 at the end of subsection 80.2BE(1) would direct readers to the definition of 'intention' in section 5.2 of the Criminal Code, and the definition of 'recklessness' in section 5.4 of the Criminal Code. This would reflect that the fault element attached to paragraph 80.2BE(1)(a) is intention, as defined in section 5.2 of the Criminal Code, and the fault element attached to paragraph 80.2BE(1)(b) is recklessness, as defined in section 5.4 of the Criminal Code. The Bill does not amend these fault elements, but simply renumbers the note to accommodate the second additional note.

312. Note 2 at the end of subsection 80.2BE(1) would signpost the new aggravated offences if the person is a religious official or other spiritual leader etc. (by operation of new section 80.2DA, described in item 7 of Schedule 1, Part 1 of the Bill) or advocacy is directed at a person less than 18 years old (by operation of new section 80.2DB, described in item 31 of Schedule 1, Part 6 of the Bill).

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313. The maximum penalty for the offence in subsection 80.2BE(1) would be increased from 7 years imprisonment to 10 years imprisonment. The increase in penalty would more appropriately account for the potential severity of offending under subsection 80.2BE(1).

Item 32 Subsection 80.2BE(2) of the *Criminal Code* (penalty and note)

314. Item 32 would repeal the penalty and note at subsection 80.2BE(2) and substitute it with a new penalty and explanatory notes.

315. Note 1 at the end of subsection 80.2BE(2) would direct readers to the definition of 'intention' in section 5.2 of the Criminal Code, and the definition of 'recklessness' in section 5.4 of the Criminal Code. This would reflect that the fault element attached to paragraph 80.2BE(2)(a) is intention, as defined in section 5.2 of the Criminal Code, and the fault element attached to paragraph 80.2BE(2)(b) is recklessness, as defined in section 5.4 of the Criminal Code. The Bill does not amend these fault elements, but simply renumbers the note to accommodate the second additional note.

316. Note 2 at the end of subsection 80.2BE(2) would signpost the new aggravated offences if the person is a religious official or other spiritual leader etc. (by operation of new section 80.2DA, described in item 7 of Schedule 1, Part 1 of the Bill) or advocacy is directed at a person less than 18 years old (by operation of new section 80.2DB, described in item 31 of Schedule 1, Part 6 of the Bill).

317. The maximum penalty for the offence in subsection 80.2BE(2) would be increased from 5 years imprisonment to 7 years imprisonment. The increase in penalty would more appropriately account for the potential severity of offending under subsection 80.2BE(2).

Item 33 At the end of Subdivision C of Division 80 of the *Criminal Code*

318. Item 33 would add new section 80.2DB at the end of Subdivision C of Division 80 of the Criminal Code. New section 80.2DB would provide aggravated offences for circumstances in which a person advocates violence or property damage etc. and that conduct is directed at a child.

319. Introducing more severe penalties for offending that occurs in these circumstances would respond to the significant increase in the number of children planning and engaging in terrorism in recent years, and the need to more severely punish adults who deliberately seek to radicalise children to violence. Children are particularly vulnerable to violent extremist messaging because they are still developing cognitive and emotional skills, forming their sense of identity and belonging, and have limited life experience. This vulnerability makes them more impressionable and more likely to adopt extremist ideologies when exposed to advocacy of violence.

320. The aggravated offences recognise that advocating violence or property damage when directed at a child is a serious act designed to exploit the vulnerability of children and cause harm to the broader community. The higher penalties reflect the gravity of this conduct and would send a clear message that targeting children for violent extremism would attract serious criminal penalties.

321. New subsection 80.2DB(1) would provide that a person (the ***offender***) commits an offence if:

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- the offender commits an offence against subsection 80.2A(1), 80.2B(1), 80.2BC(1) or 80.2BE(1) (the underlying offence) by advocating for one or more other persons to use force or violence, or cause damage (paragraph 80.2DB(1)(a)); and
- at the time of the conduct, the offender is at least 18 years old (paragraph 80.2DB(1)(b)); and
- the offender is reckless as to whether, at the time of the conduct, at least one of the other persons is less than 18 years old (whether or not one of those other persons actually is less than 18 years old) (paragraph 80.2DB(1)(c)).

322. The penalty for new subsection 80.2BD(1) would be 12 years imprisonment, which would be an increase from the penalty of 10 years imprisonment for the underlying offence. This penalty would reflect the increased seriousness of the underlying offence when it is done for the purpose of influencing children, both due to the increased likelihood of children undertaking the conduct advocated and to the detrimental impact that exposure to extremism can have on the trajectory of a child's life.

323. New paragraph 80.2DB(1)(a) would provide that the aggravated offence in new subsection 80.2BD(1) would apply if the person commits an offence against 80.2A(1) (advocating force or violence against groups), 80.2B(1) (advocating force or violence against members of groups or close associates), 80.2BC(1) (advocating damage to or destruction of real property or motor vehicle), 80.2BE(1) (advocating force or violence through causing damage to property) by advocating for one or more other persons to use force or violence, or cause damage. These offences apply if the relevant conduct would also threaten the peace, order and good government of the Commonwealth. The aggravated offences would apply to offences which involve conduct that can be used to radicalise children to extremist views or mobilise them to commit acts of violence or property damage.

324. Read together with new subsection 80.2DB(3), there is no fault element for the physical element in paragraph 80.2DB(1)(a) other that the fault element (however described) for the underlying offence. The effect of this would be that, to establish the element at paragraph 80.2DB(1)(a), the prosecution would have to establish, beyond reasonable doubt, all of the elements of the underlying offence. New paragraph 80.2DB(5)(a) further clarifies that a person will not be taken to have committed an underlying offence for the purpose of paragraph 80.2DB(1)(a) if they have a defence to the underlying offence. This would ensure fairness and consistency with existing provisions because if there is a defence to the underlying offence, the aggravated offence cannot be made out.

325. Paragraph 80.2DB(1)(b) would provide a person commits an aggravated offence if, at the time of the conduct, the person is at least 18 years old. This would ensure that only individuals who are at least 18 years of age at the time of committing the underlying offence are captured by the aggravated offence. This will ensure the offence does not apply to children offenders noting the focus is on adults who target children to radicalisation.

326. Absolute liability would apply to paragraph 80.2DB(1)(b) by the operation of subsection 80.2DB(4). The effect of absolute liability is that the prosecution is not required to prove intention, knowledge, recklessness, negligence or any other variety of fault elements in relation to these circumstances.

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327. Consistent with the Guide, and principles in the Scrutiny of Bills Committee's Report 6/200, the application of absolute liability to the physical element in paragraph 80.2DB(1)(b) is acceptable as the element in paragraph 80.2DB(1)(b) is essentially a precondition of the offence, and relate to the age of the offender which is an objective fact.

328. Absolute liability means that the defence of reasonable mistake of fact in section 9.2 of the Criminal Code would not be available to the defendant in relation to paragraph 80.2BD(1)(b). Given the matter in paragraph 80.2DB(1)(b) relates to the person's age, the state of mind of the defendant with regard to their age is irrelevant.

329. Paragraph 80.2DB(1)(c) would provide the final circumstance element of the aggravated offence. It would require that the person is reckless as to whether, at the time of the conduct, at least one of the other persons is less than 18 years old (whether or not one of those persons is actually less than 18 years old).

330. ***Recklessness*** is defined in section 5.4 of the Criminal Code, which provides that a person is reckless with respect to a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist, and having regard to the circumstance, it is unjustifiable to take that risk.

331. This element would ensure that the aggravated offence applies where an adult engages in advocacy of violence or property damage where they are aware of a substantial and unjustifiable risk that a child is among the audience or recipient of the advocating conduct. It is intended to recognise the significant harm caused when extremist messaging and calls for violence reaches children. It would also prevent offenders from avoiding criminal liability by claiming ignorance where they consciously disregarded the risk that their conduct could influence a child.

332. New subsection 80.2DB(2) would provide that a person (the ***offender***) commits an offence if:

- the offender commits an offence against subsection 80.2A(2), 80.2B(2), 80.2BC(2) or 80.2BE(2)(the ***underlying offence***) by advocating for one or more other persons to use force or violence, or cause damage (paragraph 80.2DB(2)(a)); and

- at the time of the conduct, the offender is at least 18 years old (paragraph 80.2DB(2)(b)); and

- the offender is reckless as to whether, at the time of the conduct, at least one of the other persons is less than 18 years old (whether or not one of those other persons actually is less than 18 years old) (paragraph 80.2DB(2)(c)).

333. The penalty for new subsection 80.2BD(2) would be 10 years imprisonment, which would be an increase from the penalty of 7 years imprisonment for the underlying offence. This penalty would reflect the increased seriousness of the underlying offence when it is done for the purpose of influencing children, both due to the increased likelihood of children undertaking the conduct advocated and to the detrimental impact that exposure to extremism can have on the trajectory of a child's life.

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334. New paragraph 80.DB(2)(a) would provide that the aggravated offence in new subsection 80.2BD(2) would apply if the person commits an offence against 80.2A(2) (advocating force or violence against groups), 80.2B(2) (advocating force or violence against members of groups or close associates), 80.2BC(2) (advocating damage to or destruction of real property or motor vehicle), 80.2BE(2) (advocating force or violence through causing damage to property) by advocating for one or more other persons to use force or violence, or cause damage. The aggravated offences would apply to offences which involve conduct that can be used to radicalise children to extremist views or mobilise them to commit acts of violence or property damage.

335. Read together with new subsection 80.2DB(3), there is no fault element for the physical element in paragraph 80.2DB(2)(a) other that the fault element (however described) for the underlying offence. The effect of this would be that, to establish the element at paragraph 80.2DB(2)(a), the prosecution would have to establish, beyond reasonable doubt, all of the elements of the underlying offence. New paragraph 80.2DB(5)(a) further clarifies that a person will not be taken to have committed an underlying offence for the purpose of paragraph 80.2DB(2)(a) if they have a defence to the underlying offence. This would ensure fairness and consistency with existing provisions because if there is a defence to the underlying offence, the aggravated offence cannot be made out. As outlined in the underlying offences, the defendant would bear the evidential burden for raising a defence.

336. Paragraph 80.2DB(2)(b) would provide a person commits an aggravated offence if, at the time of the conduct, the person is at least 18 years old. This would ensure that only individuals who are at least 18 years of age at the time of committing the underlying offence are captured by the aggravated offence. This will ensure the offence does not apply to children offenders noting the focus is on adults who target children to radicalisation.

337. Absolute liability would apply to paragraph 80.2DB(2)(b) by the operation of subsection 80.2DB(4). The effect of absolute liability is that the prosecution is not required to prove intention, knowledge, recklessness, negligence or any other variety of fault elements in relation to these circumstances.

338. Consistent with the Guide, and principles in the Scrutiny of Bills Committee's Report 6/200, the application of absolute liability to the physical element in paragraph 80.2DB(2)(b) is acceptable as the element in paragraph 80.2DB(2)(b) is essentially a precondition of the offence, and relate to the age of the offender which is an objective fact.

339. Absolute liability means that the defence of reasonable mistake of fact in section 9.2 of the Criminal Code would not be available to the defendant in relation to paragraph 80.2DB(2)(b). Given the matter in paragraph 80.2DB(2)(b) relates to the person's age, the state of mind of the defendant with regard to their age is irrelevant.

340. Paragraph 80.2DB(2)(c) would provide the final circumstance element of the aggravated offence. It would require that the person is reckless as to whether, at the time of the conduct, at least one of the other persons is less than 18 years old (whether or not one of those persons is actually less than 18 years old).

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341. ***Recklessness*** is defined in section 5.4 of the Criminal Code, which provides that a person is reckless with respect to a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist, and having regard to the circumstance, it is unjustifiable to take that risk.

342. This element would ensure that the aggravated offence applies where an adult engages in advocacy of violence or property damage where they are aware of a substantial and unjustifiable risk that a child is among the audience or recipient of the advocating conduct. It is intended to recognise the significant harm caused when extremist messaging and calls for violence reaches children. It would also prevent offenders from avoiding criminal liability by claiming ignorance where they consciously disregarded the risk that their conduct could influence a child.

343. New paragraph 80.2DB(5)(a) would provide that a person does not commit an underlying offence for the purposes of paragraph 80.2BD(1)(a) or (2)(a) if the person has a defence to the offence. This would ensure fairness and consistency with existing provisions, noting a person does not commit an underlying offence for the purposes of the aggravated offence if the person has a defence to the underlying offence.

344. New paragraph 80.2DB(5)(b) would provide that a person may be convicted of an offence against subsections 80.2DB(1) or (2) even if the person has not been convicted of the underlying offence. This is intended to clarify that a separate charge or conviction for the underlying offence is not a procedural precondition to liability for the aggravated offence. The prosecution would still be required to prove all elements of the underlying offence and that no defence applies, together with the additional elements of the aggravated offence (that the offender is at least 18 years old and was reckless as to whether at least one recipient was under 18 at the time of the conduct).

345. New paragraph 80.2DB(6) would provide that, to avoid doubt, if a person has been acquitted or convicted of an underlying offence, the person cannot be convicted of an offence against subsection 80.2DB(1) or 80.2DB(2) for the same conduct. This would clarify that a person cannot be convicted of the aggravated offence if they have already been acquitted or convicted of an underlying offence for the same conduct. It would ensure that a person cannot be tried for the same offence twice and would prevent multiple convictions for the same criminal conduct.

Item 34 After subsection 474.45B(1) (before the penalty)

346. Item 34 would insert a note at the end of subsection 474.45B(1) to provide that a person may commit an aggravated offence if an individual to whom such material is provided, or from whom such material is solicited, is less than 18 years old (see section 474.45BA). This note signposts the new offence at section 474.45BA.

Item 35 After section 474.45B of the *Criminal Code*

347. Item 35 inserts new section 474.45BA into the Criminal Code. New section 474.45BA would provide an aggravated offence for circumstances in which a person used a carriage service for violence extremist material in relation to a person of 18 years of age.

348. To be ***violent extremist material*** (section 474.45A), material must have 3 characteristics:

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- the material describes, depicts, or provides instruction on engaging in, supporting or facilitating serious violence; and

- a reasonable person would consider the material is intended to advance a political, religious or ideological cause; and

- a reasonable person would consider the material is intended to assist, encourage, or induce a person to engage in, or do a thing related to intimidatory acts; or to join or associate with organisations that are engaged in intimidatory acts.

349. An ***intimidatory act*** is a violent action or threat of violent action done with the intention of intimidating the public or coercing or influencing a government by intimidation.

350. Examples of violent extremist material could include:

- pictures and videos of beheadings, shootings, bombings, rape and violent assaults linked to a terrorist organisation or extremist ideology

- violent extremist manifestos and propaganda, and

- written guides on how to cause physical harm to a person.

351. Introducing more severe penalties for offending that occurs in these circumstances would respond to the significant increase in the number of children planning and engaging in terrorism in recent years, and the need to more severely punish adults who deliberately seek to radicalise children to violence. Children are particularly vulnerable to violent extremist messaging because they are still developing cognitive and emotional skills, forming their sense of identity and belonging, and have limited life experience. This vulnerability makes them more impressionable and more likely to adopt extremist ideologies when exposed to advocacy of violence.

352. The aggravated offences recognise that sharing violent extremist material with a child is a serious act designed to exploit the vulnerability of children and cause harm to the broader community. The higher penalties reflect the gravity of this conduct and would send a clear message that targeting children for violent extremism would attract serious criminal penalties.

353. New subsection 474.45BA(1) provides that a person commits an offence if:

- the person commits an offence against subsection 474.45B(1) (the underlying offence) (paragraph 474.45BA(1)(a)); and

- the person is at least 18 years old (paragraph 474.45BA(1)(b)); and

- the conduct constituting the offence involves either:

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- transmitting, making available, publishing or distributing, advertising or promoting material or electronic link to an individual or individuals (subparagraph 474.45BA(1)(c)(i)); or

- soliciting material or an electronic link from an individual or individuals (subparagraph 474.45BA(1)(c)(ii)); and

- the person is reckless as to whether, at the time of the conduct, at least one of the individuals is less than 18 years old (whether or not one of those individuals is actually less than 18 years old) (paragraph 474.45BA(1)(d)).

354. The penalty for new subsection 474.45BA(1) would be 7 years imprisonment, which would be an increase from the penalty of 5 years imprisonment for the underlying offence. This penalty would reflect the increased seriousness of the underlying offence when it is done for the purpose of influencing children.

355. New paragraph 474.45BA(1)(a) would provide that the aggravated offence in subsection 474.45BA(1) would apply if a person commits an offence against subsection 474.45B(1) (using a carriage service for violent extremist material). Violent extremist material facilitates radicalisation and may encourage and assist in the planning of violent acts.

356. Read together with new subsection 474.45BA(2) there is no fault element for the physical element in paragraph 474.45BA(1)(a) other that the fault element (however described) for the underlying offence. The effect of this would be that, to establish the element at paragraph 474.45BA(1)(a), the prosecution would have to establish, beyond reasonable doubt, all of the elements of the underlying offence. New paragraph 474.45BA(4)(a) further clarifies that a person won't have been taken to have committed an underlying offence for the purpose of paragraph 474.45BA(1)(a) if they have a defence to the underlying offence. This would ensure fairness and consistency with existing provisions because if a defence applies to the underlying offence, the aggravated offence cannot be made out. As outlined in the underlying offences, the defendant would bear the evidential burden for raising a defence.

357. Paragraph 474.45BA(1)(b) would provide a person commits an aggravated offence if the person is at least 18 years old. This would ensure that only individuals who are at least 18 years of age at the time of committing the underlying offence are captured by the aggravated offence. This will ensure the offence does not apply to children offenders noting the focus is on adults who target children to radicalisation.

358. Absolute liability would apply to paragraph 474.45BA(1)(b) by the operation of subsection 474.45BA(3). The effect of absolute liability is that the prosecution is not required to prove intention, knowledge, recklessness, negligence or any other variety of fault elements in relation to these circumstances.

359. Consistent with the Guide, and principles in the Scrutiny of Bills Committee's Report 6/200, the application of absolute liability to the physical element in paragraph 474.45BA(1)(b) is acceptable as the element in paragraph 474.45BA(1)(b) is essentially a precondition of the offence, and relate to the age of the offender which is an objective fact.

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360. Absolute liability means that the defence of reasonable mistake of fact in section 9.2 of the Criminal Code would not be available to the defendant in relation to paragraph 474.45BA(1)(b). Given the matter in paragraph 474.45BA(1)(b) relates to the person's age, the state of mind of the defendant with regard to their age is irrelevant.

361. Paragraph 474.45BA(1)(c) would provide an additional circumstance element of the aggravated offence, being that the aggravated offence would apply if the conduct constituting the underlying offence involved either:

- transmitting, making available, publishing or distributing, advertising or promoting material or electronic link to an individual or individuals (subparagraph 474.45BA(1)(c)(i)); or

- soliciting material or an electronic link from an individual or individuals (subparagraph 474.45BA(1)(c)(ii)).

362. Noting the focus of the aggravated offence, these activities are those dealings with violent extremism material which involve engaging with another person.

363. Paragraph 474.45BA(1)(d) would provide the final circumstance element of the aggravated offence. It would require that the person is reckless as to whether, at the time of the conduct, at least one of the other persons is less than 18 years old (whether or not one of those persons actually is less than 18 years old).

364. ***Recklessness*** is defined in section 5.4 of the Criminal Code, which provides that a person is reckless with respect to a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist, and having regard to the circumstance, it is unjustifiable to take that risk.

365. This element would ensure that the aggravated offence applies where an adult engages is the transmission, publishing, distribution, etc. of violent extremist material where there is a substantial and unjustifiable risk that a child would receive the material. It is intended to recognise the significant harm caused when violent extremist material reaches children. It would also prevent offenders from avoiding criminal liability by claiming ignorance where they consciously disregarded the risk that their conduct could influence a child.

366. New paragraph 474.45BA(4)(a) would provide that a person does not commit an underlying offence for the purposes of paragraph 474.45BA(1)(a) if the person has a defence to the offence. This would ensure fairness and consistency with existing provisions, noting a person does not commit an underlying offence for the purposes of the aggravated offence if the person has a defence to the underlying offence.

367. New paragraph 474.45BA(4)(b) would provide that a person may be convicted of an offence against subsection 474.45BA(1) even if the person has not been convicted of the underlying offence. This is intended to clarify that a separate charge or conviction for the underlying offence is not a procedural precondition to liability for the aggravated offence. The prosecution would still be required to prove all elements of the underlying offence and that no defence applies, together with the additional elements of the aggravated

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offence (that the offender is at least 18 years old and was reckless as to whether at least one recipient was under 18 at the time of the conduct).

368. New paragraph 474.45BA(5) would provide that, to avoid doubt, if a person has been acquitted or convicted of an underlying offence, the person cannot be convicted of the corresponding aggravated offence for the same conduct. This would clarify that a person cannot be convicted of the aggravated offence if they have already been acquitted or convicted of an underlying offence for the same conduct. It would ensure that a person cannot be tried for the same offence twice and would prevent multiple convictions for the same criminal conduct.

Part 7 – Hate symbols

Division 1 – Reversing the burden of proof for public interest elements of prohibited symbols offences

Criminal Code Act 1995

369. The amendments in Division 1 would remove the current requirement in paragraphs 80.2H(1)(d) and 80.2HA(1)(d) for the prosecution to disprove the existence of a legitimate purpose for the public display of a prohibited symbol or the giving of the Nazi salute in a public place. In some circumstances, the current requirement imposes a significant burden on the prosecution to seek expert evidence that the display did not relate to each of the purposes, for example, an academic, religious and journalistic purpose. Reversing the burden of proof to require the defendant to provide evidence suggesting a reasonable possibility of the existence of a legitimate purpose for display, would significantly reduce the complexity in prosecuting these offences. It is also consistent with the standard approach in the Criminal Code to burden of proof requirements for exemptions or defences.

370. Reversing this burden does not reduce the obligation on the CDPP to consider whether there are reasonable prospects of a conviction being secured before proceeding with a prosecution, including consideration of whether the prosecution is in the public interest. As part of making this determination, the CDPP is required to make an evaluation of how strong the case is likely to be when presented to court, including any lines of defence which are plainly open to, or have been indicated by, the alleged offender. This provides a safeguard, as it would ensure that the prosecution considers the existence of a defence in advance of proceeding with a prosecution and does not proceed with the prosecution unless they are satisfied that they have reasonable prospects of disproving the defence.

Item 36 Paragraph 80.2H(1)(c) of the *Criminal Code*

371. Item 36 would amend paragraph 80.2H(1)(c) to omit the words “applies; and” and substitute them with “applies.”. Read together with item 44, which would repeal paragraph 80.2H(1)(d), this amendment would remove the conjunction “and” which is no longer required as paragraph 80.2H(1)(c) would be the final element of the offence in subsection 80.2H(1).

Item 37 Paragraph 80.2H(1)(d) of the *Criminal Code*

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372. Item 37 would repeal paragraph 80.2H(1)(d) of the offence for publicly displaying Nazi symbols or giving the Nazi salute. This amendment would remove the current requirement for the prosecution to disprove the existence of a legitimate purpose for the public display of a prohibited symbol or the giving of the Nazi salute in a public place. The legitimate purposes outlined in subsection 80.2H(9) would instead become offence-specific defences.

Item 38 Subsection 80.2H(1) (note) of the *Criminal Code*

373. Item 38 would amend the note at the end of subsection 80.2H(1) to omit the words "subsection (10)" and substitute "subsections (9) and (10)". This would reflect the amendments at item 47 to create offence-specific defences to the offence of public display of prohibited Nazi symbols or the making of a gesture that is a Nazi salute in a public place.

Item 39 Subsection 80.2H(2) of the *Criminal Code*

374. Item 39 would omit the words "paragraphs (1)(c) and (d)" in subsection 80.2H(2) and substitute them with "paragraph (1)(c)". Read together with item 44, which repeals paragraph 80.2H(1)(d), this amendment would ensure that absolute liability continues to apply to the circumstance in paragraph 80.2H(1)(c) to maintain the intended operation of subsection 80.2H(2).

Item 40 Subsection 80.2H(9) of the *Criminal Code*

375. Item 40 would repeal existing subsection 80.2H(9) and substitute it with offence-specific defences with the same circumstances. The effect of this amendment would be that the defendant would bear the evidential burden of proving that the display was done for a legitimate purpose listed in new subsection 80.2H(9), not the prosecution as previously required. The defences have been included to address legitimate uses of the prohibited Nazi symbols or the Nazi salute because they are matters that fall within the knowledge of the defendant.

376. New paragraph 80.2H(9)(a) would provide that the offence in subsection 80.2H(1) does not apply if a reasonable person would consider that the public display of the prohibited Nazi symbol or the making of a gesture that is a Nazi salute in a public place is engaged in for a religious, academic, educational, artistic, literary or scientific purpose that is not contrary to the public interest. The matters in new paragraph 80.2H(9)(a) are intentionally prescriptive, seeking to curtail the display of prohibited Nazi symbols and the making of a gesture that is the Nazi salute as much as possible without inappropriately impacting on legitimate activities. This recognises that there are a range of circumstances for which a prohibited Nazi symbol may be publicly displayed, or a gesture of a Nazi salute may be made in public.

377. The public interest requirement in subparagraph 80.2H(9)(a)(ii) safeguards against individuals using a legitimate purpose as a front for, or in conjunction with, a harmful one. For example, it would not be appropriate for a person who has publicly displayed a Nazi hakenkreuz for the purposes of 'historical education' while actually using the display to glorify Nazi ideology and encourage its revival. This is because their purpose would be contrary to the public interest.

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378. It is intended that a religious purpose would include, for example, the use of the sacred Swastika in connection with the practice of Buddhism, Hinduism or Jainism. The sacred Swastika is an ancient symbol of peace and good fortune that holds immense significance to these faith communities. The Bill seeks to explicitly distinguish between the sacred Swastika and the Nazi hakenkreuz. It is not intended that the ban on the public display of the Nazi hakenkreuz limit the use of the sacred Swastika in connection with religious observance.

379. New paragraph 80.2H(9)(b) would provide that the offence in subsection 80.2H(1) does not apply if a reasonable person would consider that the public display of the prohibited symbol or the making of a gesture that is a Nazi salute in a public place is engaged in for the purposes of making a news report, or a current affairs report, that is in the public interest and is made by a person in their journalistic capacity. The term ***journalistic capacity*** is defined in the Criminal Code Dictionary as a capacity as a journalist, editor, producer or other person involved in the process of making news reports or current affairs reports. This defence recognises the critical role that the dissemination of news plays in our democratic society, and the importance of protecting the work of a range of professionals involved in the news and current affairs process.

380. The public interest requirement and the requirement that the journalist or broadcaster is working in a professional capacity are intended to operate to exclude the displaying of prohibited Nazi symbols for the purpose of, for example, producing a documentary to glorify Nazi ideology while purporting to be journalism. Public interest is intentionally not defined, as what is in the public interest will be informed by the circumstances of the particular case.

381. The note at the end of new subsection 80.2H(9) would clarify that the defendant bears the evidential burden in relation to the defences in that subsection in accordance with existing subsection 13.3(3). Subsection 13.3(3) provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.

382. The Guide sets out the circumstances in which an offence-specific defence is appropriate. These include where there are matters which are peculiarly within the knowledge of the defendant and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. All of these matters also rely on the purpose for which the person engaged in the conduct, which is likely to be peculiarly within the knowledge of the defendant. The defendant is best placed to adduce evidence demonstrating their purpose, including for example evidence of their purpose in displaying the symbol in an academic paper. It will be relatively straightforward for a person to meet this threshold compared to the prosecution.

Item 41 Subsection 80.2H(10) (heading) of the *Criminal Code*

383. Item 41 would repeal the existing heading in subsection 80.2H(10) and substitute "Defences – public duties etc. or opposing ideology". Read together with item 47, this amendment would ensure that the heading accurately reflects the scope of the defences provided in subsection 80.2H(10) and would distinguish those matters from the other legitimate purposes in subsection 80.2H(9).

Item 42 Paragraph 80.2HA(1)(c) of the *Criminal Code*

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384. Item 42 would amend paragraph 80.2HA(1)(c) to omit the words "applies; and" and substitute them with "applies.". Read together with item 50, which would repeal paragraph 80.2HA(1)(d), this amendment would remove the conjunction "and" which is no longer required as paragraph 80.2HA(1)(c) would be the final element of the offence in subsection 80.2HA(1).

Item 43 Paragraph 80.2HA(1)(d) of the *Criminal Code*

385. Item 43 would repeal paragraph 80.2HA(1)(d) of the offence for publicly displaying prohibited organisation symbols. This amendment would remove the current requirement for the prosecution to disprove the existence of a legitimate purpose for the public display of a prohibited organisation symbol. The legitimate purposes outlined in subsection 80.2HA(9) would instead become offence-specific defences.

Item 44 Subsection 80.2HA(1) (note) of the *Criminal Code*

386. Item 44 would amend the note at the end of subsection 80.2HA(1) to omit the words "subsection (10)" and substitute "subsections (9) and (10)". This would reflect the amendments at item 53 to create offence-specific defences to the offence of public display of prohibited organisation symbols.

Item 45 Subsection 80.2HA(2) of the *Criminal Code*

387. Item 45 would omit the words "paragraphs (1)(c) and (d)" in subsection 80.2HA(2) and substitute them with "paragraph (1)(c)". Read together with item 50, which repeals paragraph 80.2HA(1)(d), this amendment would ensure that absolute liability continues to apply to the circumstance in paragraph 80.2HA(1)(c) to maintain the intended operation of subsection 80.2HA(2).

Item 46 Subsection 80.2HA(9) of the *Criminal Code*

388. Item 46 would repeal existing subsection 80.2HA(9) and substitute it with offence-specific defences with the same circumstances. The effect of this amendment would be that the defendant would bear the evidential burden of proving that the display was done for a legitimate purpose listed in new subsection 80.2HA(9), not the prosecution as previously required. The defences have been included to address legitimate uses of prohibited organisation symbols because they are matters that fall within the knowledge of the defendant.

389. New paragraph 80.2HA(9)(a) would provide that the offence in subsection 80.2HA(1) does not apply if a reasonable person would consider that the public display of the prohibited organisation symbol is engaged in for a religious, academic, educational, artistic, literary or scientific purpose that is not contrary to the public interest. The matters in new paragraph 80.2HA(9)(a) are intentionally prescriptive, seeking to curtail the display of prohibited organisation symbols as much as possible without inappropriately impacting on legitimate activities. This recognises that there are a range of circumstances for which a prohibited organisation symbol may be publicly displayed.

390. The public interest requirement in subparagraph 80.2HA(9)(a)(ii) safeguards against individuals using a legitimate purpose as a front for, or in conjunction with, a harmful one. For example, it would not be appropriate for a person who has publicly displayed a

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prohibited organisation symbol for the purposes of an artistic work while actually using the display of the artistic work to glorify a terrorist organisation and encourage others to support the terrorist organisation. This is because their purpose would be contrary to the public interest.

391. It is intended that a religious purpose would include, for example, the display of the Shahada or Seal of the Prophet Mohammed in connection with the practice of Islamic faith. The Shahada and the Seal of the Prophet Mohammed are central tenants to the Islamic faith which have been misappropriated, along with words that constitute fundamental principles of the Islamic faith, by Islamic State. It is not intended that the ban on the public display of prohibited organisation symbols limits the use of these symbols and words in connection with religious observance which is not contrary to the public interest.

392. New paragraph 80.2HA(9)(b) would provide that the offence in subsection 80.2HA(1) does not apply if a reasonable person would consider that the public display of the prohibited organisation symbol is engaged in for the purposes of making a news report, or a current affairs report, that is in the public interest and is made by a person in their journalistic capacity. The term ***journalistic capacity*** is defined in the Criminal Code Dictionary as a capacity as a journalist, editor, producer or other person involved in the process of making news reports or current affairs reports. This defence recognises the critical role that the dissemination of news plays in our democratic society, and the importance of protecting the work of a range of professionals involved in the news and current affairs process.

393. The public interest requirement and the requirement that the journalist or broadcaster is working in a professional capacity are intended to operate to exclude the displaying of prohibited organisation symbols for the purpose of, for example, producing a documentary to promote the actions of a prohibited hate group while purporting to be journalism. Public interest is intentionally not defined, as what is in the public interest will be informed by the circumstances of the particular case.

394. The note at the end of new subsection 80.2HA(9) would clarify that the defendant bears the evidential burden in relation to the defences in that subsection in accordance with existing subsection 13.3(3). Subsection 13.3(3) provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter.

395. The Guide sets out the circumstances in which an offence-specific defence is appropriate. These include where there are matters which are peculiarly within the knowledge of the defendant and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. All of these matters also rely on the purpose for which the person engaged in the conduct, which is likely to be peculiarly within the knowledge of the defendant. The defendant is best placed to adduce evidence demonstrating their purpose, including for example evidence of their purpose in displaying the symbol in an academic paper. It will be relatively straightforward for a person to meet this threshold compared to the prosecution.

Item 47 Subsection 80.2HA(10) (heading) of the *Criminal Code*

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396. Item 47 would repeal the existing heading in subsection 80.2HA(10) and substitute "Defences – public duties etc. or opposing group ideology". This amendment would ensure that the heading accurately reflects the scope of the defences provided in subsection 80.2H(10) and would distinguish those matters from the other legitimate purposes in subsection 80.2H(9).

Division 2 – Lowering the fault element for prohibited terrorist organisation symbols offences

Criminal Code Act 1995

Item 48 Paragraph 80.2HA(1)(b) of the *Criminal Code*

397. Item 48 would amend paragraph 80.2HA(1)(b) to omit "the person knows that". The effect of this amendment would be that paragraph 80.2HA(1)(b) would read "the thing is a prohibited organisation symbol". The effect of this amendment would be that the fault element for the circumstance element of the offence in paragraph 80.2HA(1)(b) would be the default fault element of recklessness by application of section 5.6 of the Criminal Code.

398. Changing the fault element to recklessness, rather than requiring proof that the person knew the thing was a prohibited organisation symbol, would align the offence with the prohibited Nazi symbols offences and the standard fault elements in the Criminal Code.

399. ***Recklessness*** is defined in section 5.4 of the Criminal Code, which provides that a person is reckless with respect to a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist, and having regard to the circumstance, it is unjustifiable to take that risk.

400. To complement this change, a list of the most commonly used Nazi symbols, prohibited terrorist organisation symbols (including state sponsors of terrorism) and symbols used by prohibited hate groups will be published on the National Security website to support public awareness and law enforcement engagement with community groups. It would also ensure that the community can readily identify symbols that are prohibited from being publicly displayed and provide clear, accessible public information to support effective enforcement of the offences.

Item 49 Paragraph 80.2JA(1)(c) of the *Criminal Code*

401. Item 49 would amend paragraph 80.2JA(1)(c) to omit "the person knows that". The effect of this amendment would be that the fault element for the circumstance element of the offence in paragraph 80.2JA(1)(b) would be the default fault element of recklessness by application of section 5.6 of the Criminal Code.

402. Changing the fault element to recklessness, rather than requiring proof that the person knew the thing was a prohibited organisation symbol, would align the offence with the prohibited Nazi symbols offences and the standard fault elements in the Criminal Code. It would also significantly improve enforceability by enabling law enforcement to act more effectively and consistently and reduce the need to obtain complex evidence.

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403. ***Recklessness*** is defined in section 5.4 of the Criminal Code, which provides that a person is reckless with respect to a circumstance if he or she is aware of a substantial risk that the circumstance exists or will exist, and having regard to the circumstance, it is unjustifiable to take that risk.

Division 3 – Expanding definition of prohibited terrorist organisation symbols

Criminal Code Act 1995

Item 50 Paragraph 80.2E(1)(b) of the *Criminal Code*

404. Item 50 would amend paragraph 80.2E(1)(b) to omit "terrorist". This amendment would ensure that the definition of prohibited symbol in section 80.2E applies to a prohibited organisation symbol to reflect the amendments to the meaning of prohibited organisation symbol in items 58 and 59, described below.

Item 51 Subsection 80.2E(3) of the *Criminal Code*

405. Item 51 would amend subsection 80.2E(3) to omit "terrorist" (first occurring). This amendment would ensure that subsection 80.2E(3) would define prohibited organisation symbol, as opposed to prohibited terrorist organisation symbol, to reflect the addition of the symbols of new prohibited hate groups, who are listing under the framework in Part 4 of Schedule 1 of the Bill.

Item 52 Paragraph 80.2E(3)(a) of the *Criminal Code*

406. Item 52 would repeal existing paragraph 80.2E(3)(a) and substitute it with:

- a symbol that an organisation that is a terrorist organisation or prohibited hate group, or a member of such an organisation, uses to identify the organisation or any part of the organisation.

407. This amendment would expand the definition of prohibited organisation symbol to include symbols used by a prohibited hate group (as given meaning by Division 114A) or its members, to identify the prohibited hate group or any part of this prohibited hate group. This amendment is intended to capture symbols that are inextricably linked with a prohibited hate group, being an organisation that has directly engaged in, prepared or planned to engage in, or assisted the engagement in conduct constituting, a hate crime or has advocated conduct consisting of a hate crime. The symbols may be used to identify a prohibited hate group by the organisation itself or by its members, in a range of media, contexts and formats including but not limited to promotional or recruitment material, telecommunication exchanges between members, public statements or propaganda.

408. The legislation does not specify particular prohibited organisation symbols, or particular prohibited organisations, for the purpose of the definition in subsection 80.2E(3). This is to ensure that the measures can respond to Australia's complex, challenging and changing threat environment by terrorist organisation symbols and prohibited hate group symbols, and the organisations they represent, as they arise and change over time. Safeguarding against these organisations adopting new symbols in an attempt to avoid criminality is a key objective, as is ensuring that the symbols used by any new prohibited organisation that emerges in the future will be covered by these measures.

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Item 53 At the end of section 80.2E of the *Criminal Code*

409. Item 53 would add new subsection 80.2E(5) to provide definitions for ***member, prohibited hate group and terrorist organisation*** for the purpose of the definition of prohibited symbol in section 80.2E of the Criminal Code.

410. New paragraphs 80.2E would define ***member*** to mean that a member in relation to a terrorist organisation has the meaning given by Division 102 of the Criminal Code, and a member in relation to a prohibited hate group has the meaning given by new Division 114A. This would capture an informal member of a terrorist organisation or prohibited hate group, a person who has taken steps to become a member of a terrorist organisation or prohibited hate group, and in the case of a terrorist organisation or a prohibited hate group that is a body corporate, the director or an officer of the body corporate. This would clarify the different kinds of members which participates in the activities or operations of the organisation or group. This would ensure that individuals who exercise influence or control within these organisations, or who demonstrate a clear commitment to their objectives, are captured by the offences regardless of their official title or designation. This is intended to reflect the reality that terrorist organisations and prohibited hate groups often operate through loosely affiliated networks and informal structures to capture all individuals who contribute to their harmful activities.

411. New subsection 80.2E(5) would also insert a definition of prohibited hate group. ***Prohibited hate group*** would have the meaning given by new Division 114A. This would mean an organisation that is specified by a regulation made under new section 114A.3.

412. Finally, new subsection 80.2E(5) would insert a definition of terrorist organisation. ***Terrorist organisation*** would have the same meaning given by Division 102 of the Criminal Code. This includes listed terrorist organisations and organisations which are directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

Item 54 Section 80.2HA (heading) of the *Criminal Code*

413. Item 54 would omit the word "terrorist" from the heading of section 80.2HA so that it would read "public display of prohibited organisation symbols". This amendment would reflect the new meaning of prohibited organisation as amended by items 58 and 59, and reflect that the offence in section 80.2HA would be expanded to cover the new definition of prohibited organisation symbol (which now includes symbols of terrorist organisations, state sponsors of terrorism and prohibited hate groups).

Item 55 Paragraph 80.2HA(1)(b) of the *Criminal Code*

414. Item 55 would omit the word "terrorist" from paragraph 80.2HA(1)(b). Read together with item 48, this item would amend paragraph 80.2HA(1)(b) to read:

- The thing is a prohibited organisation symbol.

415. The effect of this amendment would be that the offence in section 80.2HA would capture the public display of prohibited hate group symbols, in addition to terrorist organisation symbols and state sponsor of terrorism symbols, creating consistent coverage.

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416. Expanding the offence in section 80.2HA to capture symbols of prohibited hate groups recognises that prohibited hate groups use symbols to intimidate and threaten the Australian community by promoting violence, fear, discrimination and hatred. Prohibited hate groups also use symbols to advance their extreme ideologies to a wide-reaching audience, to recruit and inspire behaviours from like-minded individuals and to establish belonging. The harm caused by prohibited hate groups and their activities, which can be conveyed powerfully through the use of symbology, can affect the whole community.

Item 56 Section 80.2HA(10)(f) of the *Criminal Code*

417. Item 56 would amend paragraph 80.2HA(10)(f) to omit "or of a state sponsor of terrorism", substitute ", of a state sponsor of terrorism, or of a prohibited hate group (within the meaning of Division 114A)". This amendment would expand the offence-specific defence in paragraph 80.2HA(10)(f), so that it is not an offence to publicly display a prohibited organisation symbol (subsection 80.2HA(1)) if the person who is displaying the prohibited organisation symbol genuinely engages in the conduct for the purpose of opposing the ideology or purposes of a terrorist organisation (within the meaning of Division 102), of a state sponsor of terrorism, or of a prohibited hate group (within the meaning of Division 114A). This would ensure that prohibited organisation symbols can be used and displayed for the purpose of opposing the harmful ideologies that prohibited hate groups represent, consistent with the implied constitutional freedom of political communication.

Item 57 Section 80.2JA (heading) of the *Criminal Code*

418. Item 57 would omit the word "terrorist" from the heading of section 80.2JA so that it would read "trading in prohibited organisation symbols". This amendment would reflect the new meaning of prohibited organisation under items 58 and 59, and reflect that the offence in section 80.2JA would be expanded to cover the new definition of prohibited organisation symbol (which now includes symbols of terrorist organisations, state sponsors of terrorism and prohibited hate groups).

Item 58 Paragraphs 80.2JA(1)(c), (5)(b) and (c), (6)(b) and (c), and 80.2M(3)(d) of the *Criminal Code*

419. Item 58 would amend paragraph 80.2JA(1)(c) to omit "terrorist". This item, in combination with the amendment at item 49, would amend paragraph 80.2JA(1)(c) to read:

- The thing is a prohibited organisation symbol.

420. The effect of this amendment would be that the offence in section 80.2JA would capture trading in prohibited hate group symbols, in addition to the existing terrorist organisation symbols and state sponsor of terrorism symbols, creating consistent coverage. Expanding the offence in section 80.2JA to capture symbols of prohibited hate groups recognises the public harm caused by individuals profiting from the sale of goods depicting or containing prohibited hate group symbols. The harm caused by prohibited hate groups and their activities, which can be conveyed powerfully through the use of symbology, can affect the whole community.

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421. Item 65 would also amend paragraphs 80.2JA(5)(b) and (c) to omit "terrorist". Subsection 80.2JA(5) contains a public interest element, which requires the prosecution to disprove that the goods that are being traded are for a genuine news report or current affairs report that is in the public interest. These amendments would reflect the amended definition of prohibited organisation symbols, and the expanded scope of paragraph 80.2JA(1)(c) described above.

422. This would ensure that news reports made by not only professional journalists, but other professionals involved in the news and current affairs process that contain prohibited organisation symbols can be lawfully traded. This recognises the critical role that the dissemination of news plays in our democratic society. The public interest requirement, and the requirement that the journalist, editor, producer and others involved in the making of the news or current affairs report is working in a professional journalistic capacity, are intended to operate to exclude goods that have been traded by organisations for the purpose of, for example, inciting violence or promoting hatred, while purporting to be journalism or the news and current affairs reporting process. The offence would not apply where a reasonable person would consider that the dissemination of the report as a whole is in the public interest, rather than a particular aspect of the report being in the public interest. Public interest is intentionally not defined, as what is in the public interest will be informed by the circumstances of the particular dissemination.

423. Item 58 would also amend paragraphs 80.2JA(6)(b) and (c) to omit "terrorist". Subsection 80.2JA(6) provides an offence-specific defence for circumstances in which a person is trading goods containing commentary on public affairs and making the commentary is in the public interest. These amendments would reflect the amended definition of prohibited organisation symbols, and the expanded scope of paragraph 80.2JA(1)(c), to ensure that this defence is available, where relevant, to the offence in subsection 80.2JA for trading in prohibited organisation symbols.

424. The offence specific defence at subsection 80.2JA(6) is an important safeguard to ensure robust political communication can continue in Australia; however, appropriate limitations are imposed to prevent against this provision being inappropriately used to excuse illegitimate trade.

425. Lastly, item 58 would amend paragraph 80.2M(3)(d) to omit "terrorist". This amendment would expand the defence available for failing to comply with a direction issued under section 80.2K to remove a prohibited organisation symbol from public display, so that the defence was available to the public display of all symbols falling under the new definition of prohibited organisation symbol.

Item 59 Dictionary of the *Criminal Code*

426. Items 59 would insert a definition of 'prohibited organisation symbol'. This item would provide that 'prohibited organisation symbol' has the meaning given by subsection 80.2E(3), thereby reflecting the amendments made to subsection 80.2E(3) by items 58 and 59, described above.

Item 60 Dictionary (definition of prohibited terrorist organisation symbol) of the *Criminal Code*

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427. Item 60 would repeal the existing definition of prohibited terrorist organisation from the Criminal Code Dictionary to reflect the new definition of prohibited organisation symbol inserted by item 66 above.

Division 4 – Amending the reasonable person test

Criminal Code Act 1995

Item 61 Subsections 80.2H(3) and (4) of the *Criminal Code*

428. Item 61 would repeal existing subsections 80.2H(3) and (4) and substitute new subsections (3) and (4) to provide two sets of circumstances that the prosecution could rely on to satisfy the element of the offence in paragraph 80.2H(1)(c). These new subsections largely replicate the earlier subsection with the following key changes:

- the reference to reasonable person is changed to be a reference to a reasonable person who is a member of the targeted group, and

- expand the provision to more closely align with the *International Convention on the Elimination of All Forms of Racial Discrimination*, by adding the additional protected attributes of colour or national or ethnic origin.

429. New subsection 80.2H(3) would set out one possible set of circumstances that the prosecution could rely on to establish the element of the offence in paragraph 80.2H(1)(c). These circumstances are that a reasonable person who is a member of a group of persons distinguished by race would consider that the public display of the prohibited Nazi symbol or the making of a gesture that is a Nazi salute in a public place involves dissemination of ideas based on racial superiority or hatred (new paragraph 80.2H(3)(a)), or could incite another person or a group of persons to offend, insult, humiliate or intimidate targeted groups or members of the targeted group because of their race (paragraph 80.2H(3)(b)).

430. The note to subsection 80.2H(3) provides clarity that the object of the subsection is to give further effect to Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination.*

431. This amendment would replace the current 'reasonable person' test in subsection 80.2H(3)) with a test that considers the perspectives of a reasonable person who is a member of a group of persons distinguished by race. The new 'reasonable member of the targeted group' test means that the focus is rightly placed on the impact the conduct would have on a reasonable member of the targeted group rather than a general member of the public. This recognises the different experiences of groups across the community, including the impact that symbology can have on groups, for example, invoking intergenerational trauma.

432. The reference to "a reasonable person who is a member of a group" is designed to direct the court to consider the experiences, perspectives and characteristics of a person with the lived experience of a person distinguished by race in determining whether it would be reasonable to consider that the public display of the prohibited Nazi symbol or the making of a gesture that is a Nazi salute in a public place had the effect described in subsection

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80.2H(3). This is intended to acknowledge the unique experiences, which may include historical oppression and the experience of being a marginalised community, of members of groups distinguished by race.

433. New subsection 80.2H(4) would set out another possible set of circumstances that the prosecution could rely on to satisfy the element of the offence in paragraph 80.2H(1)(c). These circumstances are that a reasonable person who is a member of a group of persons distinguished by race, religion or nationality (a targeted group) would consider that the public display of the prohibited Nazi symbol or the making of a gesture that is a Nazi salute in a public place involves advocacy of hatred of a targeted group, or a member of the targeted group (paragraph 80.2H(4)(a)); and involves advocacy that constitutes incitement of another person or group of persons to offend, insult, humiliate, intimidate or use force or violence against the targeted group or member thereof (paragraph 80.2H(4)(b)).

434. This amendment would replace the current 'reasonable person' test in subsections 80.2H(4) with a test that considers the perspectives of a reasonable person who is a member of a group of persons distinguished by race, religion or nationality.

435. The reference to "a reasonable person who is a member of a group" is designed to direct the court to consider the experiences, perspectives and characteristics of a person with the lived experience of a person distinguished by race, religion or nationality in determining whether it would be reasonable to consider that the public display of the prohibited Nazi symbol or the making of a gesture that is the Nazi salute had the effect described in subsection 80.2H(4). This is intended to acknowledge the unique experiences, which may include historical oppression and the experience of being a marginalised community, of members of groups distinguished by race, religion or nationality.

Item 62 Paragraph 80.2H(7)(b) of the *Criminal Code*

436. Item 62 inserts the word ", ethnic" after "national" in paragraph 80.2H(7)(b) so that the paragraph would read:

- a member of a group of persons distinguished by race, colour, sex, sexual orientation, gender identity, intersex status, disability, language, religion, political or other opinion or national, ethnic or social origin.

437. This creates greater consistency in the terminology used across this section.

Item 63 Subsections 80.2HA(3) and (4) of the *Criminal Code*

438. Item 63 would repeal existing subsections 80.2HA(3) and (4) and substitute them with new subsections (3) and (4) to provide two sets of circumstances that the prosecution could rely on to satisfy the element of the offence in paragraph 80.2HA(1)(c). These new subsections largely replicate the earlier subsection with the following key changes:

- the reference to reasonable person is changed to be a reference to a reasonable person who is a member of the targeted group, and

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- expand the provision to more closely align with the *International Convention on the Elimination of All Forms of Racial Discrimination*, by adding the additional protected attributes of colour or national or ethnic origin.

439. New subsection 80.2HA(3) would set out one possible set of circumstances that the prosecution could rely on to establish the element of the offence in paragraph 80.2HA(1)(c). These circumstances are that a reasonable person who is a member of a group of persons distinguished by race would consider that the public display of the prohibited organisation symbol in a public place involves dissemination of ideas based on racial superiority or hatred (new paragraph 80.2HA(3)(a)), or could incite another person or a group of persons to offend, insult, humiliate or intimidate targeted groups or members of the targeted group because of their race (paragraph 80.2HA(3)(b)).

440. The note to subsection 80.2HA(3) provides clarity that the object of the subsection is to give further effect to Article 4 of the *International Convention on the Elimination of All Forms of Racial Discrimination.*

441. This amendment would replace the current 'reasonable person' test in subsection 80.2HA(3) with a test that considers the perspectives of a reasonable person who is a member of a group of persons distinguished by race. The new 'reasonable member of the targeted group' test means that the focus is rightly placed on the impact the conduct would have on a reasonable member of the targeted group rather than a general member of the public. This recognises the different experiences of groups across the community, including the impact that symbology can have on groups, for example, invoking intergenerational trauma.

442. The reference to "a reasonable person who is a member of a group" is designed to direct the court to consider the experiences, perspectives and characteristics of a person with the lived experience of a person distinguished by race in determining whether it would be reasonable to consider that the public display of the prohibited organisation symbol had the effect described in subsection 80.2HA(3). This is intended to acknowledge the unique experiences, which may include historical oppression and the experience of being a marginalised community, of members of groups distinguished by race.

443. New subsection 80.2HA(4) would set out another possible set of circumstances that the prosecution could rely on to satisfy the element of the offence in paragraph 80.2HA(1)(c). These circumstances are that a reasonable person who is a member of a group of persons distinguished by race, religion or nationality (a targeted group) would consider that the public display of the prohibited organisation symbol involves advocacy of hatred of a targeted group, or a member of the targeted group (paragraph 80.2HA(4)(a)); and involves advocacy that constitutes incitement of another person or group of persons to offend, insult, humiliate, intimidate or use force or violence against the targeted group or member thereof (paragraph 80.2HA(4)(b)).

444. This amendment would replace the current 'reasonable person' test in subsections 80.2HA(4) with a test that considers the perspectives of a reasonable person who is a member of a group of persons distinguished by race, religion or nationality.

445. The reference to "a reasonable person who is a member of a group" is designed to direct the court to consider the experiences, perspectives and characteristics of a person with the

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lived experience of a person distinguished by race, religion or nationality in determining whether it would be reasonable to consider that the public display of the prohibited organisation symbol had the effect described in subsection 80.2HA(4). This is intended to acknowledge the unique experiences, which may include historical oppression and the experience of being a marginalised community, of members of groups distinguished by race, religion or nationality.

Item 64 Paragraph 80.2HA(7)(b) of the *Criminal Code*

446. Item 64 inserts the word ", ethnic" after "national" in paragraph 80.2HA(7)(b) so that the paragraph would read:

- a member of a group of persons distinguished by race, colour, sex, sexual orientation, gender identity, intersex status, disability, language, religion, political or other opinion or national, ethnic or social origin.

447. This creates greater consistency in the terminology used across this section.

Item 65 Paragraph 80.2K(6)(b) of the *Criminal Code*

448. Item 65 inserts the word ", ethnic" after "national" in paragraph 80.2H(7)(b) so that the paragraph would read:

- a member of a group of persons distinguished by race, colour, sex, sexual orientation, gender identity, intersex status, disability, language, religion, political or other opinion or national, ethnic or social origin.

449. This creates greater consistency in the terminology used across this section.

Division 5 – Directions power

Item 66 Paragraph 80.2K(1)(a)

450. Item 66 would amend paragraph 80.2K(1)(a) to omit "other than by" and substitute it with "including by". This amendment would expand the existing power in section 80.2K for police officers to direct a person to cause a prohibited symbol to cease being displayed in a public place online. This would allow police to issue a direction, either orally or writing, to a person to remove a prohibited symbol from public display on the internet. The direction may only be issued to a person who the officer suspects on reasonable grounds caused the prohibited symbol to be displayed in the public place on the internet (subparagraph 80.2L(2)(a)(i)). Providing police officers with this power is necessary to ensure that the central purpose of the display offence is not frustrated. It is consistent with the purpose of the offence that police officers have an appropriate power to minimise the harm caused to the public by the display of a prohibited symbol.

451. This amendment would only allow police officers to issue a direction to the person who caused the prohibited symbol to be displayed online in a public place. It is not intended that the power be expanded to allow the police to issue directions to, for example, internet service providers. This is because the directions power is intended to complement, not replicate, the powers of the eSafety Commissioner. It is appropriate that the eSafety Commissioner and the *Online Safety Act 2021* continue to be the central agency for

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regulating service providers though mechanisms such as take down notices, industry codes and standards and basic online safety expectations.

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Division 6 – Seizing prohibited symbols

Item 67 At the end of subsection 80.2K(1)

452. Item 67 would add a note at the end of subsection 80.2K(1) to clarify that a police officer may, under section 80.2N, also seize a thing that is, depicts or contains the prohibited hate symbol. This would reflect the new seizure power which would be added to Subdivision CA of Division 80 of the Criminal Code, described by item 75 below.

Item 68 After section 80.2M of the *Criminal Code*

453. Item 68 would insert new section 80.2N into the Criminal Code. This would provide police officers with a new power to seize a thing which is, depicts or contains a prohibited symbol that is being displayed in a public place.

454. This would address a limitation in the application of existing police powers in relation to the offences in section 80.2H and 80.2HA of the Criminal Code. New section 80.2N is specifically targeted at providing a new power for a police officer to seize a prohibited symbol when it is publicly displayed. This would provide police officers with power to take immediate enforcement action to prevent the commission or continuation of an offence under section 80.2H or 80.2HA. It is intended to complement the existing power for police officers to direct a person to cease displaying a prohibited symbol by ensuring that the offence is not undermined by the continued display of harmful symbols.

455. It is intended that the directions power remain available as a tool for police officers to deal with the broad range of circumstances in which a symbol could be displayed in a public place (for example, a prohibited symbol graffitied on a wall). The introduction of a seizure power would enable immediate disruption of the harm caused by the continued public display of a prohibited symbol (for example, where a prohibited symbol is displayed on a flag at a protest), consistent with the policy intention to minimise the harms caused to the Australian community by the public display of symbols associated with violent ideologies and the risk of radicalisation and normalisation of such symbols. The seizure power would only be available where a police officer reasonably suspects the display of the prohibited symbol is causing one of the harmful effects outlined in subsections 80.2K(2), (3) and (6), and would be accompanied by safeguards, including a mechanism for the return of seized items once the risk of harm has passed.

456. New subsection 80.2N(1) would establish that a police officer may seize a thing in accordance with section 80.2N if the thing is, depicts or contains a prohibited symbol that is displayed in a public place. The requirement that the symbol be displayed in a public place ensures that the seizure power is specifically targeted at conduct which is criminalised by sections 80.2H and 80.2HA, rather than private possession, consistent with the policy intention of the offences which focus on circumstances where the display of prohibited symbols could cause harm to the Australian community or be used to recruit or radicalise vulnerable Australians. The risk of these harms exists where prohibited symbols are displayed in public places.

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457. New subsection 80.2N(2) would provide that a police officer may seize a thing, for the purpose of preventing the commission or continuation of an offence under subsection 80.2H or 80.2HA, if the police officer has a reasonable suspicion covered by subsection 80.2K(2), (3) or (6) in relation to display of the prohibited symbol.

458. Subsections 80.2K(2) applies if a police officer reasonably suspects that the public display involves the types of conduct mentioned in paragraphs 80.2K(2)(a) or (b). These paragraphs require a police officer to suspect, on reasonable grounds, that the conduct involves dissemination of ideas based on racial superiority or racial hatred; or that the conduct could incite another person or a group of persons to offend, insult, humiliate or intimidate a person or a group of persons because of their race. Paragraph 80.2K(2)(b) uses the word 'could' indicating that it is not necessary for the police officer to reasonably suspect that a person or group has been or is being offended, insulted, humiliated or intimidated because of their race. This highlights the importance of taking action prior to harm occurring.

459. Subsection 80.2K(3) applies if a police officer reasonably suspects that the public display of the prohibited symbol involves advocacy that is advocacy of hatred of a group of persons, or a member of a group, distinguished by race, religion or nationality (paragraph 80.2K(3)(a)). The term 'advocacy' is not defined, and is intended to take its ordinary meaning. It also applies if a police officer reasonably suspects that the public display constitutes incitement of another person or group of persons to offend, insult, humiliate, intimidate or use force or violence against a group or a member of the group distinguished by race, religion or nationality (paragraph 80.2K(3)(b)).

460. As clarified by subsection 80.2K(4), it does not matter whether the conduct in paragraph 80.2K(3)(a) actually results in the hatred of a group. Accordingly, a police officer is not required to reasonably suspect that the hatred actually occurred, but rather must reasonably suspect that the hatred is being advocated. As clarified by subsection 80.2K(5), it does not matter whether the conduct in paragraph 80.2K(3)(b) actually incites another person. The effect of this is that a police officer is not required to ascertain whether the conduct had the effect of inciting another person to offend, insult, humiliate or intimidate a person, or group of persons, distinguished by race, religion or nationality.

461. Subsection 80.2K(6) applies if a police officer reasonably suspects that the public display is likely to offend, insult, humiliate or intimidate a person who is a reasonable person and a member of a group of persons distinguished by race, colour, sex, sexual orientation, gender identity, intersex status, disability, language, religion, political or other opinion or national, ethnic, or social origin because of the reasonable person's membership of that group. As provided by subsection 80.2K(7), a police officer is not required to ascertain whether a member of the group of persons distinguished by the characteristics listed in paragraph 80.2K(6)(b) sees the prohibited symbol while it is displayed in a public place.

462. Note 1 at the end of new subsection 80.2N(2) would provide that sections 80.2H and 80.2HA relate to the public display of prohibited Nazi symbols and prohibited organisation symbols.

463. Note 2 at the end of new subsection 80.2N(2) would provide that the police officer may also give a direction under section 80.2K in relation to the display of the prohibited symbol. This note would clarify that the power to seize a thing under new section 80.2N

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does not exclude or replace the separate power under section 80.2K to issue a direction to cease displaying a prohibited symbol. In practice, it is intended that the seizure power is an additional, complementary tool available to police to prevent harm to the community which is caused by the ongoing public display of a prohibited symbol.

464. It is intended that a police officer may exercise both the directions power and seizure power consecutively in certain circumstances. For example, a police officer could issue a direction under section 80.2K for a person to cease displaying a prohibited symbol and then, if the direction is not complied with, to exercise their power under new subsection 80.2N(1) to seize the prohibited symbol. It is also intended law enforcement retain flexibility to use the power they think necessary and appropriate in the circumstances. For example, in the case of the public display of a prohibited symbol during a protest, it is intended that police have discretion to decide whether a direction would be an efficient tool or whether seizure is necessary to prevent the continuation of an offence under section 80.2H or 80.2HA. It would allow police to consider all the circumstances of the case.

465. New subsection 80.2N(3) would provide that, in seizing a thing, the police officer:

- may use such force or assistance as the police officer considers reasonably necessary (paragraph 80.2N(3)(a)); and
- may seize the thing only when it actually is in a public place (paragraph 80.2N(3)(b)); and
- must not damage the thing unless it is reasonably necessary for the seizure (paragraph 80.2N(3)(c)).

466. New paragraph 80.2N(3)(a) is intended to clarify that, in seizing a prohibited symbol under new subsection 80.2N(1), the police officer can seek any assistance or use force they consider reasonably necessary to exercise the seizure of the item. This is intended to be a subjective judgement based on the circumstances in which the power is exercised. For example, the police officer may use the assistance of other police officers or equipment in order to seize the prohibited symbol. The phrase "considers reasonably necessary" is intended to require the police officer's use of assistance or force to be reasonable and proportionate to the circumstances in which the item is seized.

467. New paragraph 80.2N(3)(b) would limit the operation of the seizure power in new subsection 80.2N(1) to circumstances where the item that is, depicts or contains a prohibited symbol is being displayed in a public place. Under section 80.2F, the meaning of ***displayed in a public place*** for the purposes of the offences in section 80.2H and 80.2HA includes circumstances in which a symbol is displayed from private land but is capable of being seen by a member of the public who is in a public place. It is not intended that the seizure power in new section 80.2N authorises police officers to enter private premises. Limiting entry to private property is necessary to protect individual privacy and prevent unnecessary intrusion into personal spaces. A police officer may, in such cases, rely on other powers, such as obtaining a warrant issued under section 3E of the *Crimes Act 1914*, to lawfully enter private premises and seize a prohibited symbol.

468. New paragraph 80.2N(3)(c) is intended to ensure that a police officer does not cause damage to an individual's property when exercising the seizure power, unless such damage is reasonable and necessary in the circumstances. What is reasonable and

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necessary will vary depending on the circumstances of each case. For example, if an item displaying a prohibited symbol is secured in a way that prevents its removal, it may be reasonable and necessary to break a lock or cut a fastening to seize the item. Unnecessary destruction, such as tearing a flag when it could be folded and removed, would not meet this standard.

469. The requirement in new paragraph 80.2N(3)(c) would impose an obligation on police officers to consider alternative, less intrusive means of seizure before causing any damage. It is intended to ensure that enforcement action does not result in disproportionate harm to property. It would complement other safeguards in subsection 80.2N(3) which aim to balance the need to prevent the harms caused to the Australian community by the public display of prohibited symbols with the need to respect individual rights and freedoms.

470. New subsection 80.2N(4) would provide that a person from whom the thing was seized, or the owner of the thing, may apply to a police officer for return of the thing seized. The ability to make an application would provide individuals with a practical avenue to recover their property once the basis for its retention no longer exists. It is intended to ensure that both the immediate possessor of the thing seized, or the owner of the thing, can make an application in recognition that these may not always be the same person. It is also intended to ensure that the process for application is practicable and accessible. It is intended that when items are seized, police officers provide individuals with information about how they may apply for return of the item consistent with usual administrative practice.

471. New paragraph 80.2N(4)(a) would provide that, if the thing was seized by a member of the AFP (within the meaning of the *Australian Federal Police Act 1979*) or a special member of the Australian Federal Police (within the meaning of *the Australian Federal Police Act 1979*), the person may make an application to such a police officer for the return of the thing.

472. New paragraph 80.2N(4)(b) provides that, if a thing was seized by a member (however described) of the police force of a State or Territory, the person may make an application to a police officer who is a member (however described) of the police force of that State or Territory for the return of the thing.

473. Both of these paragraphs are intended to clarify that the application for return of the thing should be made to the policing agency of which the police officer who seized the thing is a member. This would ensure that applications for return of a thing seized by New South Wales police, for example, are not made to Western Australia police.

474. New subsection 80.2N(5) would provide that, on application, the police officer must return the thing to the person from whom it was seized, or to the owner, unless satisfied that the thing must be retained to prevent the commission or continuation of an offence, or retention of the thing is necessary for evidentiary purposes. This is intended to ensure that the thing is seized only for as long as it is needed to prevent the harms caused by the public display of prohibited symbols, or for evidentiary purposes (for example, for court proceedings). Read together with subsection 80.2N(4), the requirement that the officer return the thing is intended to ensure there is a clear avenue for a person to have their property returned when it is no longer posing a risk of harm to the community or required for evidentiary purposes.

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475. It is intended that the decision to return an item will be made by the police officer who seized it, or by another police officer within the same agency to ensure continuity and accountability. This approach reflects the seizure power's conferral to the AFP and State and Territory police officers. Each jurisdiction has established internal procedures for handling seized property. For example, the AFP operate in accordance with the AFP National Guideline on property and exhibits, which requires case officers to maintain accurate property seizure records, make reasonable attempts to return claimable property to its owner and authorise the return or disposal of items not required for evidentiary purposes. Similar principles apply across State and Territory policing agencies.

476. New subsection 80.2N(6) would provide that if no application for return of the thing is made within 90 days of the day the thing was seized, a police officer who has custody of the thing seized may destroy or otherwise dispose of the thing. This is intended to prevent police agencies from bearing the financial and administrative burden of storing property indefinitely when the person from whom the thing was seized, or the owner, has not taken steps to reclaim it. The requirement that the application be made within 90 days of seizure is intended to provide individuals with reasonable opportunity to apply for return and ensure that police resources are not unnecessarily diverted from core operational responsibilities.

477. New subsection 80.2N(7) would define the term 'police officer' to mean a member of the AFP or a special member of the AFP (within the meaning of the *Australian Federal Police Act 1979* (AFP Act)) or a member of a police force of a State or Territory. Section 4 of the AFP Act defines a member of the AFP as the Commissioner of Police, Deputy Commissioner of Police, and an AFP employee in respect of whom a declaration under section 40B of that Act is in force. Section 40B of the AFP Act empowers the Commissioner to declare an AFP employee to be a member of the AFP, if the Commissioner is satisfied that person means the competency and qualification requirements set out in section 40C of that Act. A special member of the AFP is a person appointed under section 40E of that Act, and has powers and duties expressly conferred or imposed by the Act or instrument of the special member's appointment.

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SCHEDULE 2 – MIGRATION AMENDMENTS

Part 1—Amendment of the Migration Act 1958

Migration Act 1958

Item 1 Subsection 5(1)

478. This item amends subsection 5(1) of the Migration Act by inserting the definitions for the following expressions: 'association', 'hate crime', 'member', 'prohibited hate group', 'state sponsor of terrorism', and 'terrorist organisation'.

479. The term ***association*** is defined to mean that a person has an association, for the purposes of subsections 5C(1A), 500A(1A) and 501(6A), with an organisation if the person meets or communicates with the organisation.

480. The note under the definition of association clarifies that the association may consist of a single meeting or communication.

481. The term ***hate crime*** has the meaning as in section 114A.3 of the *Criminal Code*.

482. The term ***member*** is defined to mean:

- in relation to a terrorist organisation—has the meaning given by Division 102 of the *Criminal Code*; and
- in relation to a state sponsor of terrorism—has the same meaning as in Division 110 of the *Criminal Code*; and
- in relation to a prohibited hate group—has the meaning as in Division 114A of the *Criminal Code*.

483. The term ***prohibited hate group*** is defined to have the same meaning as in Division 114A of the Criminal Code.

484. The term ***state sponsor of terrorism*** is defined to have the same meaning as in Division 110 of the Criminal Code.

485. The term ***terrorist organisation*** is defined to have the same meaning as in Division 102 of the Criminal Code.

Item 2 After paragraph 5C(1)(bb)

486. This item inserts new paragraph 5C(1)(bba) under section 5C of the Migration Act.

487. New paragraph 5C(1)(bba) provides that the Minister reasonably suspects that new subsection 5C(1A) applies in relation to the non-citizen (spreading hatred and extremism). This item is consequential to the amendments made by the insertion of new paragraph 501(6)(baa) of the Migration Act (spreading hatred and extremism), as set out in the relevant item below.

Item 3 Paragraph 5C(1)(d)

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488. This item amends paragraph 5C(1)(d) of the Migration Act, to replace "would" with "might". The amendments to this provision are consequential to the amendments made to the equivalent change made to paragraph 501(6)(d) of the character test and paragraph 500A(1)(c). Further detail regarding the change is set out in the relevant item below.

Item 4 After subsection 5C(1)

489. This item inserts new subsections 5C(1A), 5C(1B) and 5C(1C) after subsection 5C(1) of the Migration Act.

Spreading hatred and extremism

490. This item inserts new subsection 5C(1A) after subsection 5C(1) of the Migration Act to ensure that the meaning of 'character concern' continues to be aligned with the character test in subsection 501(6) and subsection 500A(1), as amended. New subsection 5C(1A) provides that a non-citizen is of character concern if any of the paragraphs in subsection 5C(1A) apply. The conduct described in paragraphs 5C(1A)(a) to 5C(1A)(e) are the same as the new limbs of the character test (set out in subsection 501(6A)) and the new grounds for visa refusal or cancellation in subsection 500A(1A).

491. Further detail regarding the new limbs of the character test is set out in the relevant item below.

492. This item also inserts Note 1 under subsection 5C(1A) to clarify that antisemitic statements are an example of statements that involve harmful ideas based on superiority over or hatred of other persons on the basis of their ethnic origin as mentioned in subparagraphs 5C(1A)(d)(i) and 5C(1A)(e)(i).

493. This item also inserts Note 2 under subsection 5C(1A) to direct the reader to subsection 5(1) for definitions of terms used in this subsection.

494. The expression 'character concern' operates for subparagraph 336E(2)(a)(iii) and paragraph 336E(2)(ec) of the Migration Act to provide for certain permitted disclosures of identifying information (see section 336A) for the purposes of identifying non-citizens who are of character concern.

495. This item also inserts subsection 5C(1B) which provides that none of the limbs of subsections 5C(1) or 5C(1A) are intended to limit or otherwise affect each other.

496. New subsection 5C(1C) provides that the Minister is not required to determine whether a person's membership of, or association with, an organisation is continuing or has concluded when making a decision for the purposes of paragraph 5C(1A)(a) or (b).

Item 5 After paragraph 500A(1)(a)

497. This item inserts new paragraph 500A(1)(aa) after paragraph 500A(1)(a) of the Migration Act.

498. New paragraph 500A(1)(aa) provides that subsection 500A(1A) of the Migration Act applies in relation to the person (spreading hatred and extremism). The amendment would operate to allow the Minister to refuse to grant or cancel a temporary safe haven visa, if,

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in the Minister's opinion, one of the grounds inserted under new paragraph 500A(1A) is applicable.

499. Further details of these grounds are provided for in the relevant item below.

Item 6 Paragraph 500A(1)(c)

500. Current paragraph 500A(1)(c) enables the Minister to refuse to grant or cancel a temporary safe haven visa if, in the Minister's opinion, in the event the person were allowed to enter or to remain in Australia, there is a significant risk that the person would:

- engage in criminal conduct in Australia; or
- harass, molest, intimidate or stalk another person in Australia; or
- vilify a segment of the Australian community; or
- incite discord or in a segment of the community; or
- represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

501. This item amends paragraph 500A(1)(c) of the Migration Act by replacing the word "would" with "might". The purpose of this amendment is to strengthen the Minister's ability to respond to circumstances where there is a significant risk that a non-citizen who has applied for, or holds, a temporary safe haven visa might engage in any of the conduct described in subparagraphs 500A(1)(c)(i) to (v), if they were allowed to enter or remain in Australia.

502. The intention of these amendments is to protect the Australian community, or a segment of that community, from the significant risk of harm posed by non-citizens who might engage in hate motivated conduct and conduct or offences relating to the spread of hatred and extremism.

Item 7 After subsection 500A(1)

503. This item inserts new subsections 500A(1A), 500A(1B) and 500A(1C) after subsection 500A(1) of the Migration Act.

Spreading hatred and extremism

504. Section 500A of the Migration Act provides for the refusal or cancellation of safe haven visas. These powers may only be exercised by the Minister personally. A temporary safe haven visa is defined in section 37A of the Migration Act. A person is granted a temporary safe haven visa to give the person temporary safe haven in Australia.

505. If the Minister makes a decision to refuse to grant or cancel a temporary safe haven visa under subsection 500A(1) or 500A(3), then the Minister must table that decision before both Houses of Parliament, setting out reasons for the decision.

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506. This item inserts new subsection 500A(1A) after subsection 500A(1) and operates to insert the new grounds on which a temporary safe haven visa may be refused or cancelled. The Minister's ability to refuse or cancel a visa is enlivened if, in their opinion, one of these grounds are applicable. The new grounds that a temporary safe haven visa can be refused or cancelled on the basis of are the same as the new limbs of the character test in new subsection 501(6A) and further information regarding the new grounds are set out in the relevant item below.

507. This item also inserts Note 1 under subsection 500A(1A) to clarify that antisemitic statements are an example of statements that involve harmful ideas based on superiority over or hatred of other persons on the basis of their ethnic origin as mentioned in subparagraphs 500A(1A)(d)(i) and 500A(1A)(e)(i).

508. Note 2 under subsection 500A(1A) directs the reader to subsection 5(1) of the Migration Act for definitions of terms used in this subsection.

509. New subsection 500A(1B) provides that none of the grounds for refusal or cancellation of a temporary safe haven visa are intended to limit or otherwise affect each other.

510. New subsection 500A(1C) provides that the Minister is not required to determine whether a person's membership or association with an organisation is continuing or has concluded when making a decision for the purposes of paragraphs 500A(1A)(a) or (b).

511. These amendments do not introduce any new powers under section 500A of the Migration Act or expand the current powers for the refusal or cancellation of a visa that are provided for under this section. If the Minister decides to refuse to grant or cancel a visa under subsection 500A(1) or (3), the Minister must notify the person of the decision. The rules of natural justice and the code of procedure (set out in Subdivision AB of Division 3 of Part 2) do not apply to a decision made under subsection 500A(1) or 500A(3).

Item 8 After paragraph 501(6)(b)

512. Under subsection 501(1) of the Migration Act, the Minister may refuse to grant a visa to a person if the person does not satisfy the Minister that the person passes the character test, which is set out in subsection 501(6) of the Migration Act.

513. Under subsection 501(2) of the Migration Act, the Minister may cancel a visa that has been granted to a person if:

- the Minister reasonably suspects that the person does not pass the character test; and
- the person does not satisfy the Minister that the person passes the character test.

514. Subsection 501(3) of the Migration Act also provides for a personal power of the Minister to refuse to grant a visa or to cancel a visa if:

- the Minister reasonably suspects that the person does not pass the character test; and
- the Minister is satisfied that the refusal or cancellation is in the national interest.

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515. Subsection 501(3A) also provides for mandatory cancellation of a visa if a person has engaged in certain conduct or has a substantial criminal record.

516. This item inserts new paragraph 501(6)(baa) into the Migration Act to provide that a person does not pass the character test where subsection 501(6A) applies to the person (spreading hatred and extremism).

517. This new paragraph, together with new subsection 501(6A) of the Migration Act, operates to introduce new limbs into the character test to address hate-motivated conduct. These new grounds are specifically set out under new subsection 501(6A) of the Migration Act, as discussed in further detail in the relevant item below.

518. These new character grounds strengthen the Minister's ability to address risks to the community where the Minister is not satisfied that the non-citizen passes the character test, or reasonably suspects that a non-citizen does not pass the character test, on the basis that the non-citizen has been engaged or is engaging in conduct that promotes hate, vilification, and division to the Australian community, or to a segment of that community.

519. The amendments are also consistent with, and support, the framework for criminally prohibiting conduct relating to hatred, vilification, and extremism set out under the Criminal Code. This includes the amendments made by Schedule 1 to this Bill to establish a regime under new Division 114A of Part 5.3B for the listing of an organisation as a prohibited hate group, and to insert a new offence prohibiting publicly inciting racial hatred under new section 80.2BF and an aggravated offence for religious officials or other spiritual leaders, who advocate or threaten violence, under new section 80.2DA of the Criminal Code.

520. The character test, as set out under subsection 501(6) of the Migration Act, currently operates to enable the Minister to refuse to grant or cancel a visa of a non-citizen who has been convicted of an offence relating to hatred and extremism under the Criminal Code on the basis that paragraph 501(6)(a) has been satisfied. This paragraph provides that a person does not pass the character test if the person has a substantial criminal record (as defined by subsection 501(7)), including where they have been sentenced to a term of imprisonment of 12 months or more.

521. Current paragraph 501(6)(c) of the Migration Act provides that a person does not pass the character test if, having regard to either or both of the person's past and general criminal conduct or the person's past and general conduct, the person is not of good character.

522. The purpose of introducing the new limbs of the character test is to enable the Minister to refuse to grant or cancel a visa in a broader range of circumstances to address risks that a non-citizen may pose to the Australian community or a segment of that community. The new grounds will strengthen the existing provisions and will provide that a person does not pass the character test on the basis of hate-motivated conduct, including in circumstances where the conduct may present a risk to the Australian community or a segment of that community, or a hate crime has been committed, but there is no criminal charge or conviction.

523. These amendments do not introduce any new powers under section 501 of the Migration Act, or expand the current powers for the refusal or cancellation of a visa that are

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provided for under subsections 501(1), (2), (3), and (3A), and 501A, 501B, or 501BA.The amendments also do not modify the existing framework for the application of natural justice under subsection 501(1) or (2), or the denial of natural justice under subsection 501(3) or 501(3A) of the Migration Act, or affect any existing mechanisms under the Migration Act that enable a non-citizen to seek merits review or judicial review of an adverse decision.

524. The character test determines whether a power to refuse to grant or cancel a visa under section 501 of the Migration Act is enlivened. These new character grounds do not enliven the mandatory cancellation power under subsection 501(3A) but enable the Minister (or a delegate) to exercise their discretion to refuse to grant or cancel a non-citizen's visa under subsections 501(1), (2) or (3) of the Migration Act.

525. A delegate of the Minister who is considering whether to exercise their discretion to cancel or refuse to grant a visa of a non-citizen who does not pass the character test will be guided by the applicable Ministerial Direction issued by the Minister under subsection 499(1) of the Migration Act. This direction ensures that decision-makers take into account certain matters when exercising their discretion.

Item 9 Paragraph 501(6)(d)

526. Current paragraph 501(6)(d) of the Migration Act provides that a person does not pass the character test if, in the event that the person were allowed to enter or remain in Australia, there is a risk that the person would:

- engage in criminal conduct in Australia; or
- harass, molest, intimidate or stalk another person in Australia; or
- vilify a segment of the Australian community; or
- incite discord or in a segment of the community; or
- represent a danger to the Australian community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

527. This item amends paragraph 501(6)(d) of the Migration Act by replacing “would” with the word “might”. The purpose of this amendment is to strengthen the character test by ensuring that a person does not pass the character test, if, in the event that the person were allowed to enter or remain in Australia, there is a risk that the person might engage in any of the conduct described subparagraphs 501(6)(d)(i) to (v).

528. The intention of this amendment is to protect the Australian community, or a segment of that community, from the risk of harm posed by non-citizens who engage in hate motivated conduct and conduct or offences relating to the spread of hatred and extremism.

529. The intention of amending the threshold from ‘would’ to ‘might’ is to enable earlier, risk-based consideration of visa refusal or cancellation where there is a credible concern that a non-citizen’s conduct may pose a risk of harm to the Australian community or a segment of that community. The amendment reflects the preventative and protective

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nature of the grounds in the character test, which is not confined to responding only once harm is likely or inevitable. It enables decision-makers to assess risk based on the totality of relevant information available at the time, particularly in the circumstances involving emerging matters of behaviour, association, or conduct that may not yet have resulted in a criminal justice outcome.

Item 10 After subsection 501(6)

Spreading hatred and extremism

530. This item inserts new subsection 501(6A) into the Migration Act. New subsection 501(6A) supports the operation of new paragraph 501(6)(baa) by setting out new limbs of the character test. The intention is to establish new grounds that specifically address hate-motivated conduct and extremism, as the basis for the refusal or cancellation of a visa under subsections 501(1), (2), or (3) of the Migration Act.

531. The new grounds under paragraphs 501(6A)(a) and (b) complement the current framework for the listing of terrorist organisations and state sponsors of terrorism under Divisions 102 and 110 of the Criminal Code as well as the amendments made by Schedule 1 to this Bill to provide for the listing of prohibited hate groups under new Division 114A. The provisions relate to persons who are or have been a member or have or have had an association with a terrorist organisation, state sponsor of terrorism or prohibited hate group.

532. The new ground under paragraph 501(6A)(c) engages the new definition of hate crime under the Migration Act (see the relevant items above), which supports the amendments made by Schedule 1 to this Bill to expand and strengthen Commonwealth offences to address the spread of hatred and extremism, but which also captures other conduct or the threat of conduct involving serious harm towards a person or persons distinguished by race, national or ethnic origin (or their property).

533. The new ground under paragraph 501(6A)(d) relates to persons who have made one or more public statements in Australia or overseas, or have endorsed a statement publicly, including online, that disseminate ideas based on superiority over or hatred of other persons on the basis of their race, colour, national or ethnic origin. This ground will apply to a person whose conduct may, in the event they were allowed to enter or to remain in Australia, give rise to a risk of harm to the Australian community.

534. The type of conduct that new paragraph 501(6A)(d) is intended to capture includes where a person endorses public statements made by another person by reposting or sharing posts online, while new paragraph 501(6A)(e) is intended to capture conduct where a person encourages one or more other persons to make such a statement.

535. New paragraphs 501(6A)(a) and (b) provide that a person does not pass the character test, if:

- in relation to the ‘membership’ limb under paragraph (a) – the person is, or has been, a member of an organisation, which was at any time of membership a terrorist organisation, a state sponsor of terrorism or a prohibited hate group; or

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- in relation to the 'association' limb under paragraph (b) – the person is or was associated with an organisation, which was at any time of the association a terrorist organisation, a state sponsor of terrorism or a prohibited hate group, and that association provides or provided support to the organisation in relation to the purposes of the organisation.

536. The insertion of these grounds into the character test complements the framework under the Criminal Code for the listing of terrorist organisations (under Division 102 of the Criminal Code), state sponsors of terrorism (under Division 110 of the Criminal Code), and prohibited hate groups (under Division 114A of the Criminal Code).

537. These amendments enable the Minister to refuse to grant or cancel a visa for a non-citizen on character grounds, due to their membership or association with a group that was (at any time during the period of their membership or association) listed as a terrorist organisation, state sponsor of terrorism, or prohibited hate group. As provided for under new subsection 501(11B), as inserted under the relevant item below, the Minister is not required to determine whether the membership or association is ongoing when making a decision for the purposes of new paragraphs 501(6A)(a) or (b).

538. The term ***member*** is defined under subsection 5(1) of the Migration Act, as having the meaning given by the relevant provision of the Criminal Code. Further detail regarding the definition of ***member*** is provided in the relevant item above.

539. Relevantly, the term ***association*** is also defined under subsection 5(1), for the purposes of new subsections 5C(1A), 500A(1A) and 501(6A), to mean 'the person meets or communicates with the organisation'. Further detail regarding the new definition of ***association*** is provided in the relevant item above.

540. The scope of the new 'association' limb is limited to circumstances where the association provides or provided support to the organisation in relation to the purposes of the organisation. This limb is not intended to infringe the implied freedom of political communication.

541. New paragraph 501(6A)(c) of the Migration Act provides that a person does not pass the character test if the person has been or is involved in conduct constituting a hate crime, whether or not the person or another person, has been convicted of an offence constituted by the conduct.

542. The expression ***hate crime*** is defined as having the same meaning as in section 114A.3 of the *Criminal Code*..

543. The insertion of a new ground whereby the person has been or is involved in conduct constituting a hate crime, without requiring a charge or a conviction of an offence, is intended to support earlier and more proportionate visa decision making in circumstances where there is credible information indicating a risk to the Australian community.

544. The amendment recognises that hate-motivated conduct may pose a community risk even where criminal proceedings have not been commenced or finalised, including where conduct has occurred online or overseas. The new ground enables the Minister to refuse to grant or cancel a visa on the basis of the conduct itself, whether or not the person has been convicted of an offence constituted by that conduct, while retaining the Minister's discretion to refuse to grant or cancel a visa under the Migration Act.

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545. For example, the intention is that this ground will enable the Minister to refuse to grant or cancel a visa on the basis that the Minister reasonably suspects that the person does not pass the character test because a person has been or is involved in conduct that constitutes a hate crime, within the meaning of section 114A.3 of the *Criminal Code*, such as causing serious harm to a person, or serious property damage against a person distinguished by race, national or ethnic origin, or engaging in conduct which would constitute a range of offences under Division 80 of the Criminal Code, where criminal proceedings have not been commenced or finalised. The intention is to provide flexibility in the new grounds of the character test to address risks related to the spread of hatred and extremism.

546. New paragraph 501(6A)(d) of the Migration Act provides that a person does not pass the character test, if both of the following apply:

- the person has made one or more public statements, or has endorsed a statement publicly, (whether in Australia or overseas) including online statements, that involves the dissemination of ideas based on superiority over, or hatred of other persons on the basis of race, colour, national or ethnic origin; and

- in the event that the person were allowed to enter or to remain in Australia, there is a risk of harm to the Australian community or to a segment of that community.

547. The intention of this provision is to strengthen the character test to address circumstances where a person disseminates ideas of superiority over or hatred of other individuals or groups on the basis of race, colour, national or ethnic origin, through their public statements (or endorsement of a public statement) that may urge others to engage in hate-motivated conduct or extremism. The amendments operate to introduce a new ground under the character test in subsection 501(6) specifically tailored to address the challenges posed by hate-motivated speech, including in relation to online activity and transnational messaging.

548. Significantly, the intention of subparagraph 501(6A)(d)(ii) is to limit the applicability of this ground to circumstances where the person's conduct may give rise to a risk of harm to the Australian community (or any part of the community). The purpose of this approach is to require the Minister to be satisfied of a clear link between the conduct of the person and the risk of harm to the community, before being satisfied that this character ground has been met and exercising the power to refuse to grant or cancel a visa on this basis.

549. New paragraph 501(6A)(e) provides that a person does not pass the character test, if both of the following apply:

- the person has encouraged one or more other persons to make a statement publicly (whether in Australia, or overseas, and including an online statement) that involves the dissemination of ideas based on superiority over or hatred of other persons on the basis of race, colour, national or ethnic origin; and

- in the event the person were allowed to enter or to remain in Australia, there is a risk of harm to the Australian community or to a segment of that community.

550. This new ground of the character test has a similar operation to the new ground under paragraph 501(6A)(d) of the Migration Act, but addresses circumstances where a person

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encourages another person to make a future public statement, including online statements, that involve the dissemination of ideas based on superiority over or hatred of other persons on the basis of race, colour, national or ethnic origin. The intention of this new ground of the character test is to capture circumstances where a non-citizen has a pattern of encouraging others to engage in hate speech, including where they repeatedly urge others through online forums or social media to make public statements that vilify or promote superiority over or hatred of other persons, even if they do not personally publish these statements.

551. Consistent with the operation of new paragraph 501(6A)(d) of the Migration Act, this ground is limited to circumstances where there is a risk that, in the event the person were allowed to enter or to remain in Australia, there is a risk of harm to the Australian community or to a segment of that community.

552. This item also inserts Note 1 to clarify that antisemitic statements are an example of statements that involve harmful ideas based on superiority over or hatred of other persons on the basis of their ethnic origin as mentioned in subparagraphs 501(6A)(d)(i) and 501(6A)(e)(i).

553. For clarity, this item also inserts a Note 2 to refer the reader to subsections (11A) and (11B) for other rules relating to this subsection, and also to subsection 5(1) of the Migration Act for definitions of terms used in this subsection.

Item 11 After subsection 501(11)

554. This item inserts subsections 501(11A) and (11B) into the Migration Act.

555. New subsection 501(11A) provides that none of the limbs of the character test are intended to limit or otherwise affect each other. The intention of this subsection is to clarify that the new provisions in the character test do not derogate from the operation of any other new or existing grounds for cancellation.

556. This item inserts a note to direct the reader to section 118 of the Migration Act, which operates to ensure that the powers to cancel a visa under the Migration Act are not limited, or otherwise affected, by each other. This clarifies that the power to cancel a visa because a person fails the character test is not limited by other powers in the Migration Act to cancel the visa.

557. New subsection 501(11B) provides that the Minister is not required to determine whether a person's membership of, or association with, an organisation is continuing or has concluded when making a decision for the purposes of new paragraph 501(6A)(a) or (b).

Item 12 Application provision

558. This item inserts an application provision in relation to the amendments made to the Migration Act under Part 1 of Schedule 2.

559. Subitem 12(1) provides that the amendments of section 5C of the Migration Act apply, for the purposes of subsection 336E(2) of that Act, in relation to any disclosure of

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information that is made on or after commencement of the amendments (whether the information was collected before, on or after that commencement).

560. Subitem 12(2) provides that the amendments of sections 500A and 501 of the Migration Act, as amended by Part 1 of Schedule 2, apply in relation to any decision:

- to grant or refuse to grant a visa if:
- the application for the visa was made before the commencement of Part 1 of Schedule 2, and had not been finally determined as at that commencement; or
    - the application for the visa is made on or after that commencement; and
- a decision made on or after that commencement to cancel a visa, whether the visa was granted before, on or after that commencement.

561. Subitem 12(3) provides that a decision covered by subitem 12(2) may take into account any conduct occurring before, on or after that commencement. This application provision makes clear that the amendments to section 500A and 501 are not retrospective, however, both sections will be enlivened where a person has engaged in the conduct described in the new limbs of the character test at any time before, on or after commencement.

Part 2—Amendment of the Migration Regulations 1994

Migration Regulations 1994

Item 13 After paragraph 5001(c) of Schedule 5

562. This item amends clause 5001 in Schedule 5 to the Migration Regulations to insert a reference to a person who has left Australia, and whose visa has been refused on character grounds under sections 501, 501A, or 501B of the Migration Act.

563. Regulation 1.03 of the Migration Regulations defines special return criterion as a criterion set out in a clause of Schedule 5, and a reference to a special return criterion by number is a reference to the criterion set out in the clause so numbered in that Schedule. Clause 5001 of Schedule 5 to the Migration Regulations operates to impose a permanent exclusion period on persons who have had their visa cancelled on the basis that they did not pass the character test under section 501, 501A or 501B of the Migration Act.

564. Clause 5001 is prescribed as a criterion for the grant of a range of temporary and permanent visas to ensure that a person whose visa has been cancelled under sections 501, 501A or 501BA of the Migration Act cannot be granted another visa, if the Minister has not, acting personally, subsequently granted a permanent visa to the person.

565. The purpose of this amendment is to extend the operation of clause 5001 to ensure that an applicant whose visa has been refused under sections 501, 501A, or 501B, who has left Australia within the meaning of subsection 5(1) of the Migration Act will be permanently excluded from Australia, whether or not the person was in Australia when the visa was refused, unless one of the following circumstances apply:

- the refusal has been revoked under subsection 501C(4) of the Migration Act; or

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- after refusing the visa, the Minister has, acting personally, granted a permanent visa to the person.

566. Extending the operation of clause 5001 ensures that a person who is in Australia as the holder of a temporary visa and has been refused the grant of a permanent visa on character grounds, is subject to the same exclusion period as a person who has had their visa cancelled on character grounds.

Item 14 In the appropriate location in Schedule 13

567. This item inserts clause 15701 into Schedule 13 to the Migration Regulations.

568. Clause 15701 provides that the amendments of the Migration Regulations made by Part 2 of Schedule 2 to the Combatting Antisemitism, Hate and Extremism Bill 2026 apply in relation to an application for a visa:

- made on or after the commencement of that Part; or

- made, but not finally determined, before that commencement.

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SCHEDULE 3 – CUSTOMS AMENDMENTS

Part 1—Prohibited material

569. Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted amends the Customs (Prohibited Exports) Regulations 1958 (Prohibited Imports Regulations), Customs (Prohibited Imports) Regulations 1956 (Prohibited Exports Regulations), and Customs Regulation 2015 (Customs Regulation), to prohibit, as objectionable goods, the exportation from and importation of prohibited symbols and violent extremist material (Part 1 of Schedule 3 refers).

570. Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, also amends the Customs Act 1901 (Customs Act) to provide clarity of operation and to complement the amendments to those Regulations made by Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026 (Part 2 of Schedule 3 refers).

Division 1—Amendments

Customs (Prohibited Exports) Regulations 1958

Item 1 After subregulation 3(2AA)

571. This item inserts a new subregulation 3(2AB) after subregulation 3(2AA) of Prohibited Exports Regulations.

572. Regulation 3 of the Prohibited Exports Regulations deals with the export control of objectionable goods. Under these controls, the export of "objectionable goods" is prohibited unless permission to export those goods is given by the Minister administering Part 2 of the Classification (Publications, Films and Computer Games) Act 1995 or an authorised person appointed by the Minister.

573. New subregulation 3(2AB) provides that, without limiting subregulation (2), new subregulation 3(2AB) also applies to goods that are violent extremist material, or are or depict prohibited symbols, or contain goods which are either of these.

574. Prior to the amendment made by this item, the export controls available to prohibit the export of violent extremist material and prohibited symbols, and goods within which these materials or symbols are contained, are limited in their scope.

575. The amendment made by this item ensures "objectionable goods" capture violent extremist material and prohibited symbols, and goods that contain extremist material and prohibited symbols (e.g., a computer, flag, mobile phone or other electronic devices that hold these things). As a result of the amendment, officers will have the authority to seize these objectionable goods and take appropriate enforcement action. This strengthens the ability of the Australian Border Force (ABF) to prevent extremist material leaving Australia and reinforces Australia's commitment to combating violent extremism and hate-based ideologies.

576. The violent extremist material and prohibited symbols that are subject to export control are physical things identified by those terms as defined under the Criminal Code.

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Item 2 At the end of subregulation 3(4)

577. This item inserts a new paragraph (c) at the end of subregulation 3(4) of the Prohibited Exports Regulations to provide an exception to the prohibition of objectionable goods in regulation 3, including as amended by item 1.

578. New paragraph (c) has the effect that the prohibition of goods in regulation 3 is not enlivened if the goods are being exported for the purpose of engaging in conduct covered by subparagraph 80.2H(9)(a)(i) or(b)(ii), or paragraphs 80.2H(10)(a) to (e), of the Criminal Code. The types of conduct that may be relevant to the general public covered by these subparagraphs include conduct for a religious, academic, educational, artistic, literary or scientific purpose, or for the purposes of making a news report or a current affairs report. From a law enforcement perspective, relevant conduct includes where it is necessary for enforcing the law, or for monitoring compliance with, or investigating a contravention of, a law, or conduct for the purposes of proceedings in a court or tribunal. Other types of conduct covered includes conduct in connection with the performance by a public official of the official's duties or functions, for conduct in connection with an individual assisting a public official in the performance of those duties or functions.

579. It is appropriate that these types of conduct do not enliven the prohibition of goods in regulation 3, as they indicate circumstances where there may be a genuine need for an exception to the prohibition of objectionable goods to apply.

Customs (Prohibited Imports) Regulations 1956

Item 3 After subregulation 4A(1AA)

580. This item inserts a new subregulation 4A(1AB) after subregulation 4A(1AA) of the Prohibited Imports Regulations).

581. Regulation 4A of the Prohibited Imports Regulations deals with the import control of objectionable goods. Under these controls, the import of "objectionable goods" is prohibited unless permission to import those goods is given by the Minister administering Part 2 of the Classification (Publications, Films and Computer Games) Act 1995 or an authorised person appointed by the Minister.

582. New subregulation 4A(1AB) provides that, without limiting subregulation (1A), new subregulation 4A(1AB) also applies to goods that are violent extremist material, or are or depict prohibited symbols, or contain goods which are either of these.

583. Prior to the amendment made by this item, as with export controls, the import controls available to prohibit the import of violent extremist material and prohibited symbols, and goods within which these materials or symbols are contained, are limited in their scope.

584. The amendment made by this item ensures "objectionable goods" capture violent extremist material and prohibited symbols, and goods that contain extremist material and prohibited symbols (e.g., a computer, flag, mobile phone or other electronic devices that hold these things). As a result of the amendment, ABF officers will have the authority to seize these objectionable goods and take appropriate enforcement action. This strengthens the ability of the ABF to prevent extremist material entering Australia and reinforces Australia's commitment to combating violent extremism and hate-based ideologies.

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585. The violent extremist material and prohibited symbols that are subject to import control are physical things identified by those terms as defined under the Criminal Code.

Item 4 At the end of subsection 4A(2)

586. This item inserts a new paragraph (c) at the end of subregulation 4A(2) of the Prohibited Imports Regulations to provide an exception to the prohibition of goods in regulation 4A, including as amended by item 3.

587. New paragraph (c) has the effect that the prohibition of goods in regulation 4A is not enlivened if the goods are being imported for the purpose of engaging in conduct covered by subparagraph 80.2H(9)(a)(i) or (b)(ii), or paragraphs 80.2H(10)(a) to (e), of the Criminal Code.

588. The types of conduct that may be relevant to the general public covered by these subparagraphs include conduct for a religious, academic, educational, artistic, literary or scientific purpose, or for the purposes of making a news report or a current affairs report. From a law enforcement perspective, relevant conduct includes where it is necessary for enforcing the law, or for monitoring compliance with, or investigating a contravention of, a law, or conduct for the purposes of proceedings in a court or tribunal. Other types of conduct covered includes conduct in connection with the performance by a public official of the official's duties or functions, for conduct in connection with an individual assisting a public official in the performance of those duties or functions.

589. It is appropriate that these types of conduct do not enliven the prohibition of goods in regulation 4A, as they indicate circumstances where there may be a genuine need for an exception to the prohibition of objectionable goods to apply.

Customs Regulation 2015

Item 5 Section 4 (definition of *commercial quantity of objectionable goods*)

590. This item repeals the definition of "commercial quantity of objectionable goods", which is made redundant by the amendment made by item 6.

Item 6 Subclause 1(1) of Schedule 7 (table items 22 and 23)

591. This item repeals table items 22 and 23 of Schedule 7 of the Customs Regulation 2015 (Customs Regulation), which deal with tier 1 goods, and substitutes a new table item 22.

592. Section 233BAA of the Customs Act establishes offences for the importation and exportation of goods that are "tier 1 goods" punishable by a Court by a maximum penalty of 5 years or 1000 penalty units, or both. For section 233BAA, "tier 1 goods" are prescribed in the regulations and, amongst other goods, include objectionable goods.

593. New table item 22 has the effect that a good that is an "objectionable good" (paragraph (a) of new table item 22 refers), but is not an item of child abuse material (paragraph (b) of new table item 22 refers) is prescribed as a "tier 1 good", the importation and exportation of which (without permission) is an offence under section 233BAA of the Customs Act.

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594. The amendment made by this item removes the commercial quantities threshold for "objectionable goods" for the purposes of being prescribed as a tier 1 good and, as such, operates to capture all quantities of goods that are objectionable goods described, including, to the extent not covered by an exception, goods that are violent extremist material or prohibited symbols, and goods that contain violent extremist material or prohibited symbols, irrespective of their quantity.

595. Advancements in electronic storage have significantly altered the operating environment for objectionable goods. A single electronic device is now capable of storing thousands of images and videos, whereas prior to the amendment, the Customs Act and the Customs Regulation treated this as one good. For example, removing the commercial quantity threshold for objectionable goods to attract a tier 1 offence provides a Court with discretion to consider the quantity of objectionable images and not just the quantity of devices the images are held on at the time of importation or exportation.

596. The removal of the quantity threshold for objectionable goods is intended to:

- make appropriate sanctions available to a court for identified egregious offences;
- increase the deterrence effect of the border controls; and
- encourage voluntary compliance with border controls.

597. The strengthening of deterrence by including these types of objectional goods within the table of Schedule 7, including all quantities of these goods as described, is considered appropriate due to the serious nature of the materials being captured. The inclusion of these items within an existing framework ensures that the penalties being applied are broadly equivalent to similar offences for the importation or exportation of objectionable goods. Finally, the approach taken is consistent with the Guide.

Item 7 Subclause 1(2) of Schedule 7 (definition of *commercial quantity of objectionable goods*)

598. This item repeals the definition of "commercial quantity of objectionable goods", which is made redundant by the amendment made by item 6.

Division 2—Application and transitional provisions

Customs (Prohibited Exports) Regulations 1958

Item 8 In the appropriate position in Part 5

599. This item inserts a new regulation 27 titled "Transitional matters—amendments made by Part 1 of Schedule 3 to the Combatting Hate and Extremism Act 2026" in Part 5 of the Prohibited Exports Regulations to deal with transitional matters for amendments made to the Prohibited Exports Regulations by the amendments made by Part 1 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted.

600. New regulation 27 provides that amendments of the Prohibited Exports Regulations made by Part 1 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026 apply in relation to goods exported from Australia on or after the commencement of that Part.

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Customs (Prohibited Imports) Regulations 1956

Item 9 In the appropriate position before Schedule 1

601. This item inserts a new regulation 23 titled "Transitional matters—amendments made by the Combatting, Antisemitism, Hate and Extremism Act 2026" in Part 1 of the Prohibited Imports Regulations to deal with transitional matters for amendments made to the Prohibited Imports Regulations by the amendments made by Part 1 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted.

602. New subregulation 23(1) has the effect that amendments of the Prohibited Imports Regulations made by Part 1 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026 apply in relation to goods imported to Australia on or after the commencement of that Part.

Customs Regulation 2015

Item 10 In the appropriate position in Part 18

603. This item inserts a new section 167 titled "Amendments made by Part 1 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Act 2026" in Part 18 of the Customs Regulation to deal with transitional matters for amendments made to the Customs Regulation by the amendments made by Part 1 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted.

604. New section 167 provides that amendments of the Customs Regulations made by Part 1 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026 apply in relation to goods imported to Australia on or after the commencement of that Part or goods exported from Australia on or after the commencement of that Part.

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Part 2—Powers relating to instruments

Overview

605. Part 2 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, seeks to clarify existing provisions within the Customs Act to make clearer the nature of instruments approving forms and statements and the Minster's ability to make legislative instruments, administrative instruments, forms, and statements.

Customs Act 1901

Item 11 At the end of section 4A

606. This item amends section 4A of the Customs Act to insert new subsection 4A(2), which provides that a form or statement mentioned in section 4A, or an instrument approving such a form or statement, is not a legislative instrument.

607. Section 4A of the Customs Act allows the Comptroller-General of Customs to, by instrument, approve a form or a statement for the purposes of provisions in the Customs Act for which those terms are referenced. This extends through the definition of "This Act" as defined under section 4 of the Customs Act to include for the purposes of provisions in subordinate legislation made under the Customs Act for which those terms are referenced.

608. The forms and statements, that are approved, set out the information that needs to be communicated to the Department for the purpose of the provision for which the form or statement is referred to. Information provided through a form is for satisfying documentary requirements. Information provided through a statement is for the provision of information electronically to a system established and maintained by the Comptroller-General of Customs. Instruments approving both provide for the manner and method of the doing of an act, being the provision of information either, via a physical form, or via electronic communication.

609. Table item 6 under section 6 of the Legislation (Exemptions and Other Matters) Regulation 2015 (LEOM Regulation) has the effect that instruments approving forms are not legislative instruments within the meaning of the Legislation Act 2003 (Legislation Act). Furthermore, table item 5 of section 6 of the LEOM Regulation has the effect that instruments the effect of which is to approve a manner or method of doing an act are also not legislative instruments. Neither instruments approving a form nor instruments approving a statement are legislative instruments.

610. The purpose of the amendment made by this item is to assist readers by making clear on the face of the Customs Act that instruments made under section 4A are not legislative instruments within the meaning of subsection 8(1) of the Legislation Act.

611. This amendment does not introduce a new head of power with respect to delegated legislation, nor does it affect existing legislation. It intends to clarify or assist the reader regarding the existing power within the legislation and therefore it does not engage concerns around the inappropriate delegation of legislative powers.

Item 12 After subsection 50(3A)

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612. This item inserts new subsection 50(3B) after subsection 50(3A) of the Customs Act.

613. Section 50 of the Customs Act permits regulations made by the Governor-General, under section 270 of the Customs Act, to prohibit the importation of goods into Australia, and includes:

- by prohibiting the importation of goods absolutely (paragraph 50(2)(a) of the Customs Act refers);
- by prohibiting the importation of goods in specified circumstances (paragraph 50(2)(aa) of the Customs Act refers);
- by prohibiting the importation of goods from a specified place (paragraph 50(2)(c) of the Customs Act refers);
- by prohibiting the importation of goods unless specified conditions or restrictions are complied with (paragraph 50(2)(c) of the Customs Act refers).

614. The regulations under the Prohibited Imports Regulations are made in accordance with section 50 of the Customs Act.

615. Regulations made for the prohibition of goods may set out the specified circumstances, conditions (including preconditions), and restrictions under which the goods are to be prohibited, including the formulation of those circumstances or preconditions.

616. New subsection 50(3B) provides that regulations made for the purposes of section 50 may confer on the Minister the power to make provision in relation to a matter by legislative instrument.

617. The amendment made by this item makes clearer the operation and scope of section 50 to effect specified circumstances, conditions (including preconditions) and restrictions for the purposes of prohibiting the importation of goods by explicitly making clear the Minister has the power to outline these matters by legislative instrument, where that power is conferred by the regulations. This puts beyond doubt the operation of section 50.

618. This amendment does not introduce a new head of power with respect to delegated legislation, nor does it affect existing legislation. It intends to clarify or assist the reader regarding the existing power within the legislation and therefore it does not engage concerns around the inappropriate delegation of legislative powers.

Item 13 After subsection 112(2AA)

619. This item inserts new subsection 112(2AB) after subsection 112(2AA) of the Customs Act.

620. Section 112 of the Customs Act permits regulations made by the Governor-General, under section 270 of the Customs Act, to prohibit the exportation of goods from Australia, and includes:

- by prohibiting the exportation of goods absolutely (paragraph 112(2)(a) of the Customs Act refers);

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- by prohibiting the exportation of goods in specified circumstances (paragraph 112(2)(aa) of the Customs Act refers);

- by prohibiting the exportation of goods from a specified place (paragraph 112(2)(c) of the Customs Act refers);

- by prohibiting the exportation of goods unless specified conditions or restrictions are complied with (paragraph 112(2)(c) of the Customs Act refers).

621. The regulations under the Prohibited Exports Regulations are made in accordance with section 112 of the Customs Act.

622. Regulations made for the prohibition of goods may set out the specified circumstances, conditions (including preconditions) and restrictions under which the goods are to be prohibited, including the formulation of those circumstances or preconditions.

623. New subsection 112(2AA) provides that regulations made for the purposes of section 112 may confer on the Minister the power to make provision in relation to a matter by legislative instrument.

624. Similar to Item 12, the amendment made by this item makes clearer the operation and scope of section 112 to effect specified circumstances, conditions (including preconditions) and restrictions for the purposes of prohibiting the exportation of goods by explicitly making clear the Minister has the power to outline these matters by legislative instrument, where that power is conferred by the regulations. This puts beyond doubt the operation of section 112.

625. This amendment does not introduce a new head of power with respect to delegated legislation, nor does it affect existing legislation. It intends to clarify or assist the reader regarding the existing power within the legislation and therefore it does not engage concerns around the inappropriate delegation of legislative powers.

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SCHEDULE 4 – FIREARMS AMENDMENTS

Part 1 National gun buyback

Division 1—National gun buyback

626. This Part provides for a legislative framework to establish a national gun buyback scheme as part of the national firearms program to support governments to purchase surplus and newly restricted firearms.

627. This scheme is facilitated through a coordinated national framework where the Commonwealth provides financial assistance to the States (which is defined to include the Australian Capital Territory and the Northern Territory) to support their implementation of the national gun buyback scheme by way of reimbursements. The States will be responsible for the collection, processing and payment to persons for surrendered firearms.

628. The provisions under this Part incorporate mechanisms in section 16(1) of the *Federal Financial Relations Act 2009* (the FFR Act) and section 7 of the *Federation Reform Fund Act 2008* (the FRF Act) to make grants of financial assistance to the States to support the delivery of the national gun buyback scheme.

629. This model establishes a legislative framework for the national gun buyback scheme that, supported by the FFR Act and FRF Act, that recognises the split of responsibility between the Commonwealth and the States. Payments will be made in accordance with the terms and conditions set out in the Federation Funding Agreement schedules between the Commonwealth and the States. Payments made under these frameworks ensure the integrity of public funds paid to States through the included safeguards. While other relevant financial assistance and payments can be made to States under the FFR Act, the Bill also includes specific provisions outside the FFR Act for the Government to appropriate funds in the Consolidated Revenue Fund, allowing payments in connection to the national firearms program to be made to entities other than the States.

Item 1 Object of Part

630. This item inserts an objects provision which indicates an intention to rely on the implied nationhood power as a constitutional basis for the legislative scheme.

631. This item provides that the object of Part 1 is to provide for the Government of the Commonwealth, as the national Government of Australia, to implement a national gun buyback scheme in response to the antisemitic terrorist attack at Bondi Beach on 14 December 2025.

Item 2 Definitions

632. Subitem (1) explains what is meant by certain phrases that have been used in this Schedule.

633. Subitem (2) provides the ability to set an alternative buyback period, outside of the default buyback period of 1 January 2026 to 31 December 2027. This alternative buyback period is specific to each State and so must be based on the recommendation of the

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relevant police Minister of that State. Given the legal and other frameworks that the States will need in place to support the Buyback Scheme, this flexibility is an important option for the States to ensure full and effective implementation of the Buyback Scheme.

634. Subitem (3) provides the AFP Minister with the power to set additional measures needed to support the objectives of the broader firearms reform, but that were not specifically contemplated by National Cabinet on 15 December 2025. While National Cabinet provided the high-level authority for, and objectives of, reform and, specifically, the Buyback Scheme, additional measures may be identified in future to provide necessary detail or otherwise support the implementation of the reforms.

635. An instrument made under this provision is intended to be a notifiable instrument in accordance with section 11 of the *Legislation Act 2003* (the Legislation Act). Notifiable instruments are used for matters of long-term public interest that are not legislative in character. This applies to instruments made under this item, as it enhances clarity and consistency in implementation of the national gun buyback scheme across the various jurisdictions. They must be registered on the Federal Register of Legislation to ensure public transparency and they are not subject to parliamentary disallowance or the sunsetting framework.

Item 3 Qualifying compensation paid by a State

636. Subitem (1) sets out the meaning of qualifying compensation. It provides that compensation paid by a State is considered qualifying compensation to the extent that the compensation is paid during the buyback period for the State under a compensation scheme:

- set up by the State to support the national firearms program; and
- approved by the AFP Minister under subitem (2).

637. Subitem (2) provides a power for the purposes of paragraph (1)(b) for the AFP Minister to, by notifiable instrument, approve a compensation scheme set up by a State to support the national firearms program. The intention is that this applies to each State individually to accommodate different timing to enact the necessary reform and to implement the national gun buyback scheme, while simultaneously ensuring fairness and consistency in implementation across jurisdictions.

638. An instrument made under this provision is a notifiable instrument for the purposes of section 11 of the Legislation Act. Notifiable instruments are used for matters of long-term public interest that are not legislative in character. This applies to instruments made under this item, as it enhances clarity and consistency in implementation of the national gun buyback scheme across the various jurisdictions. They must be registered on the Federal Register of Legislation to ensure public transparency and they are not subject to parliamentary disallowance or the sunsetting framework.

Item 4 Determination under *Federal Financial Relations Act 2009*

639. Subitem (1) provides that the Minister administering the *Federal Financial Relations Act 2009* (that is, the Treasurer or another Treasury Minister) must make a determination under subsection 16(1) of that Act in relation to a State in respect of reimbursement of

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some of the qualifying compensation paid by the State, noting this cost is to be shared between the State and the Commonwealth.

640. This provides that a Treasury Minister is to determine that an amount specified under subsection 16(1) is to be paid to a State as a grant of financial assistance to support the implementation by the State of the national gun buyback scheme. Under the FFR Act, an amount subject to such a determination is credited to the Federation Reform Fund by, and subsequently debited for, the purposes of making the grant. The Federation Reform Fund is set up as a special account under the *Federation Reform Fund Act 2008* (FRF Act) for the purposes of making grants of financial assistance to States. Together, the FFR Act and the FRF Act provide a standing appropriation for the Commonwealth to provide financial support for the delivery of specific projects and outputs, such as the national gun buyback scheme. Under subsection 7(2) of the FRF Act, the terms and conditions of the grant of financial assistance are to be set out in a written agreement between the Commonwealth and the relevant State.

641. Subitem (2) clarifies that, if necessary, a Treasury Minister can make determinations for payment of specified amounts to States in connection with the implementation of the national firearms program which are not 'qualifying compensation' paid by the State. This may include, for example, the costs of storage and transportation before destruction.

Item 5 Other financial assistance and payments

642. This item provides the AFP Minister with the power to authorise payments not covered in Item 4.

643. Subitem (1) enables the AFP Minister to authorise payments in connection to the implementation of the national firearms program. This may include, for example, payments in relation to administration costs associated with the implementation of the national gun buyback scheme. The reference to 'activities' in this subitem is intended to provide a clear connection to the constitutionals heads of power contained in subitems (5)-(9) below.

644. Subitem (2) provides that subitem (1) does not apply in relation to a payment to a State. Such payments are provided for in Item 4 only.

Overall limit on payments under this item and AFP Minister's instrument

645. Subitem (3) establishes the need for a statutory cap on the financial authority of the AFP Minister, with subitem (4) requiring this cap to be set by the AFP Minister prior to making any payment under this item.

646. Together, these provisions ensure fiscal accountability and maintain appropriate parliamentary oversight, rather than the program being left to broad administrative discretion. This provides a transparent framework for public and parliamentary monitoring of the national gun buyback scheme's total cost.

647. An instrument made under this provision is intended to be a notifiable instrument in accordance with section 11 of the Legislation Act. Notifiable instruments are used for matters of long-term public interest that are not legislative in character. Given that these instruments relate to the use of public monies, it is important that these are available for

transparency. They must be registered on the Federal Register of Legislation to ensure transparency and they are not subject to parliamentary disallowance or the sunsetting framework.

Constitutional heads of power

648. The following sub-items cumulatively set out the relevant constitutional bases (i.e. heads of power) for payments made under this item:

- Subitem (5) – *Implied nationhood*
- Subitem (6) – *Defence power*
- Subitem (7) – *Corporations power*
- Subitem (8) – *Territories power*
- Subitem (9) – *Commonwealth places power*

649. Additionally, the Note under subitem (5) refers to item 1 (the objects provision), indicating that the nationhood power is intended to form one of the constitutional bases of the legislative scheme.

Appropriation

650. Subitem (10) establishes legislative authority to withdraw funds for specific purposes relating to the national gun buyback scheme outlined in this Part. This is an important mechanism that ensures parliamentary control over government spending as required under sections 81 and 83 of the Constitution. These sections operate together to require legislative authority for the appropriation of money from the Consolidated Revenue Fund.

651. To ensure constitutional compliance, this measure provides clear authority that payments under this Part are funded via a standing appropriation of the Consolidated Revenue Fund. This ensures the necessary legal authority for the executive to spend public money for the specific purpose of implementing the national gun buyback scheme.

Division 2—Consequential amendments

Income Tax Assessment Act 1997

Item 6 Subsection 995-1(1) (definition of *firearms surrender arrangements*)

652. Under the current law, compensation payments for individuals and businesses that surrender firearms as part of the national gun buyback scheme may be taxable in some circumstances. The tax implications depend on the circumstances of each affected taxpayer, for example, whether the firearm was privately owned or for business use.

653. This amendment expands the scope of the existing definition of *firearms surrender arrangements* to include the national firearms program, as defined in item 2 of Division 1 of Part 1 of Schedule 4 to the Bill. Noting that the details of the national gun buyback scheme have not been finalised at the time of introduction, the amendment will ensure that compensation payments received by a taxpayer under the national gun buyback

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scheme for the surrender of an eligible firearm or loss of business are not assessable for income tax purposes. Specifically, the amendment ensures that:

- amounts received as compensation under the national gun buyback scheme which would otherwise be assessable income are treated as non-assessable, non-exempt income under section 59-10 of the *Income Tax Assessment Act 1997*;
- a capital gain made from compensation received under the national gun buyback scheme is disregarded under subsection 118-37(3) of the *Income Tax Assessment Act 1997*, and
- where compensation received under the national gun buyback scheme exceeds the adjustable value of a surrendered firearm, no amount will be included in assessable income via section 40-285 of the *Income Tax Assessment Act 1997* under section 40-289 of the *Income Tax (Transitional Provisions) Act 1997*.

Item 7 Application provision

654. This item provides that the new definition for firearms surrender arrangements applies to any income year in which a person receives compensation under the national gun buyback scheme.

Part 2 – Firearms Background Checks

Division 1 —AusCheck amendments

AusCheck Act 2007

Item 8 Subsection 4(1)

655. This item amends current subsection 4(1) of the AusCheck Act to insert several new defined terms to support the amendments of the AusCheck Act made by this Amendment Act. This item inserts definitions for ***CEO of ACIC, firearms background check, firearms licensing authority, law enforcement agency and national security agency.***

656. The term ***CEO of ACIC*** is defined to mean the Chief Executive Officer of the Australian Criminal Intelligence Commission (ACIC), as established by the *Australian Crime Commission Act 2002.* In order to furnish an 'adverse' criminal intelligence assessment in relation to a firearms background check, the CEO is referenced as needing to have a reasonable suspicion that preventing someone from holding a firearms licence is required address a risk of a firearm being used in connection with serious and organised crime.

657. The term ***firearms background check*** is defined to mean a background check conducted under regulations made for the purposes of paragraph 8(1)(f). New paragraph 8(1)(f) expands the regulation-making power at section 8 to extend to the establishment of an AusCheck scheme to conduct and coordinate background checks of individuals in connection with a decision under a law of a State or Territory about whether to issue, impose conditions, renew, revoke or vary a firearms licence, or in connection with an application by a law enforcement agency or a national security agency in respect of an individual who holds a firearms licence.

658. The term ***firearms licensing authority*** is defined to have the same meaning given by regulations made for the purposes of this definition.

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659. The term ***law enforcement agency*** is defined to mean a Commonwealth authority, or an authority of a State or Territory, that has functions relating to law enforcement.

660. The term ***national security agency*** is defined to mean the Australian Security Intelligence Organisation, the Australian Criminal Intelligence Commission or any other agency of the Commonwealth prescribed by the regulations.

661. The purpose of this amendment is to support the use of these terms in amended subsection 8(1) and new section 10B which provides for the matters that the AusCheck scheme may make provision for in regulations made for the purposes of paragraph 8(1)(f).

Item 9 Paragraph 5(ba)

662. This item amends paragraph 5(ba) of the definition of ***background check*** to insert "or (f)" after "8(1)(a)".

663. Section 5 of the AusCheck Act provides the definition of a background check and paragraph 5(ba) provides that a background check conducted for the purposes of paragraph 8(1)(a) means any matters relevant to a criminal intelligence assessment (as defined in section 36A of the *Australian Crime Commission Act 2002*) of the individual.

664. New paragraph 8(1)(f) is the head of power to enable the AusCheck Regulations to provide for the establishment of a scheme relating to the conduct and coordination of background checks if the check is in connection with the decision under the law of a State or Territory about whether to issue, renew, revoke or vary a firearms licence, or in connection with an application by a law enforcement agency or national security agency in respect of an individual who holds a firearms licence.

665. The effect of this amendment is to provide that the definition of a background check conducted for the purposes of paragraph 8(1)(f) includes matters relevant to a criminal intelligence check, as defined in section 36A of the ACC Act (subsequent amendments in this Bill will amend this reference to Part III of the ACC Act).

Item 10 At the end of subsection 8(1)

666. This item inserts new paragraph (f) in subsection 8(1) of the AusCheck Act.

667. Subsection 8(1) of the AusCheck Act provides that regulations may provide for the establishment of an AusCheck scheme relating to the conduct and coordination of background checks of individuals for reasons specified in subsection 8(1).

668. New paragraph 8(1)(f) expands the purposes for which regulations may be made for the establishment of an AusCheck scheme.

669. The effect of new paragraph 8(1)(f) is to enable the regulations to provide for the establishment of an AusCheck scheme relating to the conduct and coordination of background checks of individuals if the check is of an individual in connection with a decision under the law of a State or Territory about whether to issue a firearms licence to the individual or otherwise relating to the issue of the such a licence (including in relation

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to conditions); or a decision about whether to renew, revoke, vary or suspend a firearms licence (subparagraphs 8(1)(f)(i) and (ii)).

670. The purpose of the amendments at subparagraphs 8(1)(f)(i) and (ii) is to legislate the head of power for the expansion of the AusCheck scheme to facilitate background checks for the purposes of supporting firearms licensing authorities making licensing decisions at any point in the life cycle of a firearms licence – including at the initial application stage, licence renewals and point-in-time checks that may factor into a decision to revoke, vary or suspend a firearms licence.

671. The effect of subparagraph 8(1)(f)(iii) further enables the regulations to provide for the AusCheck scheme being established to extend to the conduct and coordination of background checks of individuals in connection with an application by a law enforcement agency or national security agency for a background check of an individual who already holds a firearms licence.

672. The purpose of this amendment is to enable a law enforcement agency or a national security agency to make a proactive application for a background check on an 'own motion' basis in respect of an individual who already holds a firearms licence. This amendment recognises that changes to an individual's risk profile reflected by a background check may not align with licence renewal cycles, and that a current licence holder may become a concern of a national security or law enforcement agency at any point in time. The intention is to enable law enforcement or national security agencies to make an application for a firearms background check of that individual at that point in time rather than waiting for licence renewal. This creates a responsive firearms background checking scheme that can be triggered as appropriate, not just at renewal points or at the initial application stage, to enhance public safety, enable greater use of intelligence in firearms licensing processes, and, and prevent the misuse of firearms by high-risk individuals.

Item 11 After subsection 8(4)

673. This item inserts a new subsection 8(4A) into the AusCheck Act which provides that if paragraph 8(1)(f) applies, a firearms background check of an individual may only take into account the following matters provided in paragraphs (a) to (c).

674. The purpose of this amendment is to function as a reading down provision to provide certainty and clarity as to what checks are included in a firearms background check. Where regulations are made under paragraph 8(1)(f), a firearms background check of an individual may only consist of the following types of assessments/checks:

- an assessment by ASIO of the individual under the Australian Security Intelligence Organisation 1979 (paragraph 8(4A)(a));

- a criminal intelligence assessment within the meaning of Division 2A of Part II of the ACC Act (noting this reference to the ACC Act will be updated by subsequent amendments in this Bill) of the individual under that Act (paragraph 8(4A)(b)); and

- the citizenship status of the individual (paragraph 8(4A)(c)).

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675. The purpose for inclusion of a security assessment from ASIO at paragraph 8(4A)(a), is to assess if the individual to whom the background check relates poses a threat to security. An adverse or qualified assessment may be given where the individual having access to firearms would not be consistent with the requirements of security.

676. The purpose for inclusion of a criminal intelligence assessment from the ACIC at paragraph 8(4A)(b), is to identify whether the individual has links to serious and organised crime and whether those links indicate, should the individual be granted a licence, that a firearm may be used in connection with serious and organised crime.

677. The purpose for inclusion of a citizenship check at paragraph 8(4A)(c) is to provide that regulations can provision for background checking processes where citizenship status is relevant to the consideration of a firearms licencing authority. This is primarily to accommodate two scenarios where an application for a firearms background check is made to AusCheck:

- The first is where a firearms licensing authority is not the applicant in relation to the firearms background check, and therefore no verification of that individual's citizenship status, which ordinarily would be conducted by the firearms licensing authority, would have occurred. In this circumstance, a firearms background check will include a citizenship status check by AusCheck of the individual before proceeding.

- The second scenario is where the Secretary believes on reasonable grounds that the individual's citizenship status is incorrect. For example, this may arise where an individual may have applied for a firearms licence but have since renounced their citizenship.

678. In these circumstances, a firearms background check will also include a citizenship status check by AusCheck of the individual before a background check has commenced or during a background check that is underway.

Item 12 After section 10A

679. This item inserts a new section 10B into Part 2 of the AusCheck Act. Section 10B sets out the matters that may be prescribed in the AusCheck Regulations for the firearms background checking scheme.

680. New subsection 10B(1) details the matters for which the AusCheck scheme made for the purposes of paragraph 8(1)(f) may provide or relate to.

681. The purpose of new subsection 10B(1) is to place appropriate limitations on the regulation-making power in relation to the AusCheck scheme for the purposes of firearms background checks. The matters specified for the purposes of subsection 10B(1), which may be prescribed in the regulations for the purposes of a firearms background check, are outlined below.

682. New paragraph 10B(1)(a) specifies that regulations may be made in relation to the making of an application for a firearms background check by a firearms licensing authority, a law enforcement agency or a national security agency.

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683. New paragraph 10B(1)(b) specifies that regulations may be made in relation to the information that is to be contained in an application for a firearms background check (including the requirements in relation to consent for the check). The reference to consent in this paragraph is intended to enable the regulations to provide coverage relating to the consent of the individual who is applying for their firearms licence, rather than the consent of the applicant (who might be State or Territory firearms licensing authority, or law enforcement or national security agency) who applies for a background check in respect of that individual.

684. This paragraph is further supported by subsection 10B(3) below which provides that for the purposes of this paragraph 10B(1)(b), without limiting this paragraph, the circumstances in which an individual is taken to have given consent to another person making an application for a firearms background check of that individual.

685. New paragraph 10B(1)(c) specifies that regulations may be made in relation to the manner for conducting a firearms background check.

686. New paragraph 10B(1)(d) specifies that regulations may be made in relation to the criteria against which an application for a firearms background check is to be assessed.

687. New paragraph 10B(1)(e) specifies that regulations may be made in relation to the form of advice to be given to the applicant for a firearms background check.

688. New paragraph 10B(1)(f) specifies that regulations may be made in relation to the form of advice to be given to other persons about the status or outcome of a firearms background check (including any conditions relating to the advice being provided to other persons).

689. New paragraph 10B(1)(g) provides for regulations to be made in relation to any other matters relevant to a firearms background check.

690. New subsection 10B(2) provides that the matters referred to in subsection (1) may relate to all firearms background checks to be conducted for the purposes of paragraph 8(1)(f); or a specified class of such background checks conducted for the purposes of paragraph 8(1)(f). This provision provides scope for the regulations to determine what information may be assessed as part of the firearms background check.

691. New subsection 10B(3) provides that for the purposes of paragraph (1)(b), without limiting that paragraph, an individual is taken to have given consent to another person making an application for a firearms background check of the individual if:

- the individual has applied for a firearms licence (whether immediately before the firearms background check or at any previous time) (paragraph 10B(3)(a)); and

- before making the application for the firearms licence, the individual was advised by the person to whom that application was made, in accordance with the requirements (if any) specified in the regulations, that a firearms background check was a precondition to the issuing of the licence and maybe conducted at any time the licence is in force (subparagraphs 10B(3)(b)(i) and (ii))

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692. The effect of subsection 10B(3) is that where an individual has applied for a firearms licence and if before making the application the individual was advised that a firearms background check was a precondition to the issuing of the licence and may be conducted at any time the licence is in force, they are taken to have given their consent to another person to make an application for a firearms background check in respect of that individual.

693. This provision ensures that the element of consent to an AusCheck background check, has been accounted for in legislation and ensures that a firearms licensing authority, a law enforcement agency or a national security agency who makes an application for a firearms background check in respect of the individual operate on the deemed consent of that individual when the individual applied for a firearms licence.

694. It is reasonably necessary to deem consent from licence holders to enable ad-hoc checks from law enforcement and national security agencies to function. Without deeming consent, agencies seeking ad-hoc checks risk compromising sensitive intelligence or operational information, as AusCheck would need to request that an individual to whom a background check relates consents to the check at the point it is requested. The deemed consent provision is a proportionate and necessary safeguard because it applies only to existing licence holders and relates to checks being undertaken for public safety purposes, ensuring operational effectiveness without unnecessary intrusion.

Item 13 Subsection 13(1)

695. This item omits "The" at the beginning of subsection 13(1) and substitutes "Subject to subsection (3), the".

696. Subsection 13(1) describes the circumstances where the collection, use and disclosure of personal information (other than identity verification information) is taken to be authorised by the AusCheck Act for the purposes of the *Privacy Act 1988*.

697. The purpose of this amendment is to make subsection 13(1) subject to new subsection 13(3) which has the effect of restricting the application of section 13 only to information collected about the individual who is, or has been subject to a firearms background check, for the purposes of a firearms background check. The overall effect of this amendment is to limit the scope of authorised collection, use and disclosure of personal information only to the individual who is the subject of the firearms background check.

Item 14 Paragraph 13(1)(a)

698. This item inserts "status or" before "outcome" in paragraph 13(1)(a) of the AusCheck Act.

699. This amendment updates the language in this provision to enable the collection, use and disclosure of information, as currently contemplated in section 13(1)(a), to take place in relation to advising on the status at a particular point in time of a background check in relation to an individual, as well as being able to do in relation to the outcome of the check.

700. This amendment is necessary noting that, under the firearms background checking scheme, AusCheck will have a discretion to provide advice to a firearms licensing

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authority that an individual is under review, which concerns their status at a particular point in time rather than a final outcome.

Item 15 At the end of section 13

701. This item inserts new subsection 13(3) and clarifies the application of section 13 in relation to firearms background checks. Subsection 13(3) provides that section 13 applies in relation to information (other than identity verification information) collected about an individual for the purposes of a firearms background check only if the individual is, or has been, the subject of the firearms background check.

702. The effect of new subsection 13(3) is to clarify that the authorisation for the collection, use and disclosure of personal information under section 13 applies only to information collected about an individual who is, or has been subject to a firearms background check, for the purposes of a firearms background check.

703. This amendment ensures that personal information collected, other than information of the individual who is or has been subject to a firearms background check, will not be able to be used under this section unless those individuals themselves become the subject of a firearms background check.

Item 16 At the end of subsection 14(1)

704. This item inserts a new note after subsection 14(1). Subsection 14(1) provides that the Secretary may establish and maintain a database (the AusCheck database) of information (other than identity verification information) that relates to the AusCheck scheme.

705. The purpose of this new note is to direct readers to new subsection 14(4) which provides for the limitations on the authorisation of retention and subsequent use and disclosure of information collected for the purposes of a firearms background check.

Item 17 At the end of section 14

706. This item inserts new subsection 14(4) at the end of section 14. Subsection 14(4) provides that section 14 only applies in relation to information (other than identity verification information) collected about an individual for the purposes of a firearms background check only if the individual is, or has been, the subject of the firearms background check.

707. The purpose of subsection 14(4) is to clarify that the authorisation for the retention and subsequent use and disclosure of information under section 14 only applies to information (other than identity verification information) collected about the individual for the purposes of a firearms background check only if the individual is, or has been, the subject of the firearms background check.

708. This amendment works with the previous two items to ensure that personal information collected, other than information of the individual who is or has been subject to a firearms background check, is only transmitted to ASIO and ACIC for contextual risk evaluation. It will not be able to be stored, retained or reused in the AusCheck database unless those individuals themselves become the subject of a firearms background check. Said

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information will be disposed of by AusCheck once ASIO and ACIC have confirmed it has been received.

Item 18 Transitional provision

709. This item is a transitional provision which states that despite the operation of new paragraph 10B(1)(b) inserted by this Part, an individual is taken to have given consent to another person making an application for a firearms background check of the individual if, immediately before the commencement of this item, the individual holds a firearms licence that is in force under a law of a State or Territory.

710. Paragraph 10B(1)(b), as introduced earlier, enables the AusCheck scheme to provide, for the purposes of paragraph 8(1)(f), information that is to be contained in an application for a firearms background check (including in relation to consent for the check). Subsection 10B(3), also as introduced earlier, states that for the purposes of paragraph 10B(1)(b), an individual is taken to have given consent to another person making an application for a firearms background check of the individual under certain circumstances.

711. The effect of this provision is such that individuals who already hold a firearms licence before the commencement of this item, are taken to have consented to another person, such as a firearms licensing authority, a law enforcement agency or a national security agency, to apply for a firearms background check in respect of them under the AusCheck scheme. This is a deemed consent provision that is limited to individuals who hold a firearms licence immediately before the commencement of this item.

712. In relation to individuals who apply for a firearms licence following the commencement of the firearms background checking scheme, the standard provisions relating to consent will apply as built into the firearms background checking framework, including that of deeming consent at the time of licence application or renewal to allow for future ad-hoc background checks.

713. The note after this provision states that this section constitutes an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 (APP 6) of the *Privacy Act 1988*.

714. APP 6 states that an APP entity can only use or disclose personal information for which it was collected (the 'primary purpose'), or for a secondary purpose where an exception applies. This note makes clear that the exception at APP 6.2(b) is intended to apply, which enables the use or disclosure of personal information for a secondary purpose where that secondary use or disclosure of personal information is required or authorised by or under an Australian law.

715. The secondary use or disclosure of personal information authorised by this section is reasonable, necessary and proportionate to achieving the policy objectives of the Bill. This transitional provision is limited to individuals who already hold a firearms licence that is in force immediately before the commencement of this item. This limitation is both a necessary constraint to mitigate any privacy impacts, but also ensures that the firearms background checking scheme can commence promptly and that the law enforcement and national security agencies can begin making ad hoc applications for firearms background checks, using AusCheck, and having those outcomes incorporated into licensing decisions by firearms licensing authorities, without operational delay.

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716. Conversely, the absence of this statutory authorisation would mean that AusCheck would be unable to facilitate a background check if requested by law enforcement and national security agencies on those who already hold active firearms licences, without those agencies or the firearms licensing authority re-engaging with an individual to seek their express consent of the individual. This could risk compromising sensitive intelligence and undermine the integrity of any ongoing investigations or operational activities, which may further undermine public safety and the integrity of the licensing regime.

Australian Security Intelligence Organisation Act 1979

Item 18 Subsection 39(3)

717. This item repeals the existing subsection 39(3) of the ASIO Act, and substitutes with a revised subsection. The revised subsection will provide that subsection 39(1) of the ASIO Act does not prevent a Commonwealth agency from taking prescribed administrative action (as defined in paragraph 35(1)(h) of the ASIO Act):

- on the basis of a communication made under subsection 18(3) or 19A(4) to a staff member of the Commonwealth agency (paragraph 39(3)(a)); or

- without limiting paragraph (a), for the purposes of a firearms background check (as defined within the AusCheck Act).

718. Section 39 of the ASIO Act relates to preliminary advice from ASIO. Relevantly, subsection 39(1) provides a restriction which stipulates that a Commonwealth agency shall not take, refuse to take or refrain from taking prescribed administrative action on the basis of any communication in relation to a person that is made by ASIO which does not amount to a security assessment, or on the basis of an adverse or qualified security assessment made by ASIO before the commencement of the ASIO Act.

719. Also of relevance, the exercise of any power, or the performance of any function, in relation to decisions under a law of a State or Territory about whether to issue or revoke a firearms licence, is described as 'prescribed administrative action' for the purposes of paragraph 35(1)(h) of the ASIO Act.

720. Taken together, this would have the effect of preventing or restricting AusCheck or a firearm licensing authority from taking any action in relation to a firearms licensing decision on the basis of any communication from ASIO that is not a security assessment or equivalent.

721. The proposed amendment to section 39(3) that this item provides would ensure that the existing restriction in section 39(1) does not apply for the purposes of a firearms background check, as defined within the AusCheck Act. This is to give effect to future amendments to the AusCheck Regulations, allowing ASIO to provide preliminary advice to inform firearms licence decisions by a firearms licencing authority.

722. In practice, it would enable ASIO, as a national security agency, to include a suggestion in relation to possible further action, such as suspending or cancelling or delaying approval of a licence, while the final assessments and outcomes of the background check

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are still forthcoming. AusCheck would then provide that suggestion to a firearms licensing authority, who could choose to act on that suggestion.

723. This amendment would align the exceptions to subsection 39(1), in relation to the taking of prescribed administrative action by AusCheck or another Commonwealth agency, with the existing exceptions contained in subsection 40(1B), which apply to preliminary communications to either:

- a State or an authority of a State; or
- a Commonwealth agency for transmission to a State or an authority of a State,

724. for use in consideration of taking prescribed administrative action by the State or an authority of a State in respect of a person. In particular, this would align with the exception in paragraph 40(1B)(b) relating to action of a temporary nature that is of a kind described in paragraphs (g) or (h) of the definition of 'prescribed administrative action', which would include the suspension of a firearms licence by a State firearms licensing authority.

Division 2—ACC and ASIO amendments

Australian Crime Commission Act 2002

Item 20 Subsection 4(1) (at the end of the definition of *serious and organised crime*)

725. This note clarifies that a different definition of ***serious and organised crime***, as defined in section 52, applies only in the new Part III to the ACC Act.

Item 21 After paragraph 7A(d)

726. This item inserts 'to make and give criminal intelligence assessments (within the meaning of Part III) in accordance with that Part' into the list of functions of the Australian Crime Commission (also referred to as the ACIC) in section 7A of the ACC Act. This will clarify that the making and giving of criminal intelligence assessments under the new Part III to the ACC Act is a statutory function of the ACIC.

Item 22 Division 2A of Part II

727. This item specifies that the Division 2A of Part II to the ACC Act is to be repealed.

Item 23 Subsection 46A(8)

728. This item specifies that subsection 46A(8) of the ACC Act is to be repealed, noting it is made redundant by the amendment made by item 4 which repeals Division 2A of Part II to the ACC Act. The amendment made by Item 3 will clarify that the making and giving of criminal intelligence assessments under the new Part III to the ACC Act is a statutory function of the ACIC.

Item 24 After Part II

729. This item inserts a new Part III into the ACC Act which will establish a revised criminal intelligence assessment framework.

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730. The new Part III will make targeted changes to strengthen the operation of the ACIC's criminal intelligence assessment framework and expand the scope of the framework to enable the ACIC to provide criminal intelligence assessments to AusCheck for the purpose of firearms background checks, in addition to the existing function relating to aviation and maritime security identification cards.

Part III—Criminal intelligence assessments

731. The new Part III to the ACC Act will enable the ACIC to make and give criminal intelligence assessments to inform certain background checks undertaken by AusCheck, including to determine the eligibility of individuals to access certain secure environments and to possess a firearms licence. This Part is based on Division 2A of Part II to the ACC Act, which was introduced by the *Transport Security Amendment (Serious Crime) Act 2021*.

732. In making a criminal intelligence assessment, the ACIC will assess, by reference to ACIC intelligence and information, whether it would be consistent with preventing the advancement of serious and organised crime for prescribed administrative action to be taken, or not taken, in respect of a person. The exact form of prescribed administrative action is provided for by the legislation pursuant to which background checks are required or permitted.

733. Criminal intelligence assessments complement other types of background checks that are undertaken to inform the eligibility of individuals to access certain secure environments or to hold a firearms licence, including ASIO's security assessments. They recognise that the ACIC may hold particular information with regards to serious and organised crime, that may not be captured by the other parts of a background check relevant to a particular AusCheck scheme, such as identity checks, nationally coordinated criminal history checks and security assessments. In this way, they seek to expand the scrutiny that a person is afforded during the background check process, to prevent them using access to these environments or the possession of a firearm in ordered to prevent the advancement of serious and organised crime.

734. Consistent with the existing criminal intelligence assessment framework, Part III of the ACC Act will enable the ACIC to make and give criminal intelligence assessments for purposes related to background checks required or permitted by the *Aviation Transport Security Act 2004* (ATS Act) and the *Maritime Transport and Offshore Facilities Security Act 2003* (MTOFS Act) or regulations under those Acts. Prescribed administrative action under these Acts currently includes the non-provision or cancellation of aviation security identification cards (ASICs) and maritime security identification cards (MSICs).

735. Part III of the ACC Act will also expand the application of the ACIC's criminal intelligence assessments to inform background checks for firearms licencing decisions under State and Territory firearms legislation, or any instrument made under that legislation. The exact form of prescribed administrative action would be determined by the States and Territories firearms law, but could include a decision on whether or not to issue a new firearms licence, including the imposition of conditions on that licence, or a decision to renew, revoke, vary or suspend an existing firearms licence.

736. Additionally, Part III of the ACC Act will introduce the ability for criminal intelligence assessments to be made and given for purposes related to background checks required or

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permitted by an Act prescribed by the Australian Crime Commission Regulations 2018 (ACC Regulations), or a legislative instrument under the Act prescribed by those regulations. This seeks to recognise the risk that serious and organised crime plays within other environments and sectors by enabling the criminal intelligence assessments to be made for the purposes of background checks required by emerging schemes as appropriate.

737. Part III will also provide legislative authority for the ACIC to use automated decision-making for certain types of criminal intelligence assessments, being non-adverse criminal intelligence assessments, where no results were returned against a person in a search of certain ACIC intelligence holdings, in line with instructions issued by the Chief Executive Officer (CEO) of the ACIC. The practical effect of this approach is that automated decision making will only be used where it is beneficial to the applicant, for example, where it is appropriate for the applicant to access certain secure environments or have possession of a firearm, from a criminal intelligence assessment perspective.

738. Part III will also provide notification requirements, and the ability to apply for Administrative Review Tribunal (ART) review of an adverse criminal intelligence assessment, unless that assessment relates to a firearms background check.

Division 1—Preliminary

739. Division 1 contains definitions for the purposes of the new Part III to the ACC Act and provides further explanation about the meaning of core definitions for this Part.

Item 52 Definitions

740. This section contains definitions that are used in this Part.

741. The section introduces the definition of background check which has the same meaning as in section 5 of the *AusCheck Act 2007* (AusCheck Act). A background check, in relation to an individual, is an assessment of information relating to one or more specified activities, including matters relevant to an ACIC criminal intelligence assessment and ASIO security assessment.

742. This section introduces the definition of ***firearms background check*** which has the same meaning as in the AusCheck Act. A firearms background check is defined to mean a background check conducted under regulations made for the purposes of paragraph 8(1)(f) of the AusCheck Act. Paragraph 8(1)(f) establishes an AusCheck scheme to conduct and coordinate background checks of individuals in connection with a decision under a law of a State or Territory about whether to issue, impose conditions, renew, revoke or vary a firearms licence, or in connection with an application by a law enforcement agency or a national security agency in respect of an individual who holds a firearms licence.

743. This section provides an updated definition of **law enforcement or intelligence interests**, formerly ‘law enforcement interests’. Law enforcement or intelligence interests may inform decisions relating to the making of criminal intelligence assessments and the disclosing of particular information in, or relating to, a criminal intelligence assessment. Law enforcement or intelligence interests is defined in a non-exhaustive manner to include interests in one or more of the following:

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- Paragraph (a) specifies interest in 'avoiding prejudice or disruption to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence and security intelligence'—this paragraph reflects the importance of protecting ongoing investigations, partnerships and other efforts (including transnational efforts) directed at preventing and investigating crime, safeguarding security, and protecting and promoting Australia's national security and national interests;

- Paragraph (b) specifies interest in 'protecting the technologies and methods used to collect, analyse, secure or otherwise deal with, criminal intelligence, foreign intelligence or security intelligence'—this paragraph reflects the importance of protecting sensitive technologies and methods used by agencies, the compromise of which can affect multiple operations and can risk enduring and significant intelligence losses;

- Paragraph (c) specifies interest in 'the protection and safety of informants and of persons associated with informants'—this paragraph reflects that the compromise of information concerning informants can have grave implications for the safety of those persons and their associates, as well as potentially enabling a sophisticated actor to identify other informants, and having broader ramifications for the willingness of persons to serve as informants in the future;

- Paragraph (d) specifies interest in 'ensuring that intelligence and law enforcement agencies are not discouraged from giving information to a nation's government and government agencies'—this paragraph reflects the importance of information and intelligence-sharing arrangements between agencies and nations, in particular to combat transnational or foreign criminal enterprises and organisations;

- Paragraph (e) specifies interest in 'avoiding disclosure of lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures'—similar to paragraph (b), this paragraph reflects the importance of protecting lawful methods and procedures use to prevent, detect, investigate or deal with crime, to ensure their ongoing efficacy.

744. These amendments include in paragraph (a) of the definition of law enforcement or intelligence interest the consideration of 'avoiding prejudice', in addition to 'avoiding disruption' 'to national and international efforts relating to law enforcement, criminal intelligence, criminal investigation, foreign intelligence and security intelligence'. The addition of 'avoiding prejudice' is to ensure that criminal intelligence which is not-ongoing is captured by this definition, for example criminal intelligence that is received at a point in time and related to a time limited event. The intent of the word prejudice is that it is point in time neutral and allows the CEO to exercise greater judgement on what may be included. This updated definition captures intelligence interests, as well as law enforcement interests. The intention of this definition is that it would capture ACIC intelligence as well as administrative documents/information within the ACIC's holdings.

745. This definition is included for the purpose of various provisions that restrict the disclosure of documents and information used by the ACIC to prepare criminal

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intelligence assessments, based upon the accepted grounds for which a public interest immunity claim may be made.

746. This section notes a revised definition of prescribed administrative action which has the meaning given by section 54A. The details of the revised definition are dealt with below, but the key change will be to introduce new forms of prescribed administrative in relation to firearms licencing decisions under State or Territory law.

747. This section notes a revised definition of serious and organised crime which has the meaning given by section 54B. The details of the revised definition are dealt with below, but the key change will be to introduce a temporal element which aims to ensure the ACIC can be responsive to the threat of serious and organised crime, including by operating in an anticipatory or discovery phase, in relation to exercising its criminal intelligence assessment function introduced by Part III.

748. This section also notes the new definition of specified criminal intelligence assessment action which is defined under section 54G and refers to a specific action which may be undertaken by computer program in relation to an assessment for the purposes of Part III of the ACC Act. This definition has been inserted to provide a legislative basis for the use of automated decision making for specified actions under subsections 54C(6) and 54D(2) of Part III of the ACC Act, being certain criminal intelligence assessments that are not adverse.

Section 53 Meaning of *criminal intelligence assessment*

749. This clause will define what the term criminal intelligence assessment, sometimes referred to as an assessment, is intended to capture. The definition of criminal intelligence assessment is complimented by thresholds contained within the legislation and regulations to which the particular background check relates (for example, section 6.28 of the Aviation Transport Security Regulations 2005 (ATS Regulations) under the ATS Act, for the purpose of an ASIC background check).

750. The definition of criminal intelligence assessment is based on previous section 36A of the ACC Act. The definition provides a broad description of what a criminal intelligence assessment is, to ensure the definition operates effectively alongside the thresholds contained in other relevant legislation and regulations, including the ATS Act, the MTOFS Act and their respective regulations, as well as the AusCheck Act.

751. The words ‘recommendation, opinion or advice’ contained in section 53(1) are intended to take their ordinary meanings, however, must be contained within a written statement. For example, this could include a suggestion or proposal as to the best course of action, view or judgement formed in relation to the question, or any statement of advice which may offer guidance as to the most appropriate course of action in relation to the assessment. The words ‘recommendation, opinion or advice’ are to be read in conjunction with the words ‘otherwise referring to the question’. This phrase is also intended to take its ordinary meaning and would capture any other forms of communication (i.e. beyond a recommendation, opinion or advice) that are made in reference to the question of whether it is consistent with preventing the advancement of serious and organised crime for prescribed administrative action to be taken, or not to be taken, in respect to a person.

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752. Also under section 53(1), 'Consistent with' is intended to take its ordinary meaning, and would capture a criminal intelligence assessment made, for example, in line with the principles of, or are done with the aim of, preventing, avoiding or stopping the advancement of serious and organised crime.

753. 'Advancement' in section 53(1) is intended to encompass acts that may enable, progress and lead to serious and organised crime. For example, in the context of a criminal intelligence assessment for the purpose of a background check for an ASIC, advancement may capture scenarios where ACIC intelligence suggests that the individual to who the background check relates may use access to secure aviation environments to advance serious and organised crime (as defined by section 54B), such as by trafficking illicit drugs, precursor chemicals, tobacco or firearms.

754. In these scenarios, the ACIC would not necessarily need to consider that the individual to who the background check relates themselves would use this access to commit serious and organised crime, but rather that they may exploit access to secure environments to advance serious or organised crime. For example, creating vulnerabilities within a secure aviation environment, making it more susceptible to serious and organised crime.

755. A further example, in the context of a criminal intelligence assessment for the purpose of a firearms background check, advancement may capture scenarios where ACIC intelligence suggests that the individual to who the background check relates may use access to a firearm to advance serious and organised crime activities, for example illicit drug ventures.

756. The definition of serious and organised crime for the purposes of Part III is contained within section 54B. The definition of prescribed administrative action is contained at section 54A.

757. Section 53(2) is an avoidance of doubt clause, to clarify when a communication is considered a criminal intelligence assessment, and when it is not. This is important for other parts of the criminal intelligence assessment scheme, including the definition of 'adverse criminal intelligence assessment' under section 54 and section 54F which precludes other agencies from taking prescribed administrative action on the basis of any communication from the ACIC which does not amount to a criminal intelligence assessment. The intent of this text is to prevent the ACIC making any qualifications or comments that could potentially be prejudicial to an individual, without being subject to the relevant criminal intelligence assessment threshold and safeguards, such as available review mechanisms.

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<u>Section 54 Meaning of adverse criminal intelligence assessment</u>

758. This clause will define what the term adverse criminal intelligence assessment is intended to capture, being a criminal intelligence assessment, as defined in section 53, that contains:

- any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person, and

- a recommendation that 'prescribed administrative action' (as defined at section 54A) be taken or not be taken in respect of the person, being a recommendation the implementation of which would be prejudicial to the interests of the person.

759. The definition of ***adverse criminal intelligence assessment*** is modelled on the equivalent definition in Division 2A of Part II to the ACC Act.

760. The terms 'any opinion or advice, or any qualification of any opinion or advice, or any information' under paragraph (a) are intended to take their ordinary meaning. For example, this could include a view or judgement formed in relation to the question, or any statement of advice which may offer guidance as to a course of action in relation to the assessment. This includes any qualified opinion or advice, which would include any statement that expresses some level of uncertainty about its own accuracy and is not taken to be definitive, though may still be prejudicial. This also includes any information, which may include anything that has the power to inform a prejudicial view against the interests of the person.

761. ***Prejudicial to the interests of the person*** in paragraphs (a) and (b) is intended to include any opinion or advice, any qualification or information, or any recommendation that is adverse to the interests of a person because it has the potential to influence prescribed administrative action being taken.

762. An adverse criminal intelligence assessment may be given by the CEO, for example in relation to a ASIC or MSIC background check, in circumstances where the ACIC is satisfied that there is intelligence or information that suggests the person may use access to secure environment to commit a serious and organised crime, such as smuggling illicit tobacco, or may assist another person to commit such a crime, such as by tampering with cargo manifests.

763. An adverse criminal intelligence assessment may also be given by the CEO, for example in relation to a firearms background check. This applies in circumstances where the CEO of the ACIC reasonably suspects that preventing the individual from holding a firearms licence is necessary to address a risk that a firearm may be used in connection with serious and organised crime. For example, enabling the trafficking of illegal goods, or assisting another person to commit such a crime by supplying firearms for these purposes.

764. The definition of prescribed administrative action is contained at section 54A.

<u>Section 54A Meaning of prescribed administrative action</u>

765. This clause will define what the term prescribed administrative action is intended to capture.

766. ***Prescribed administrative action*** is defined with reference to specific legislation, as the exact form of prescribed administrative action is provided for by the legislation pursuant to which background checks are required or permitted (e.g. the ATS Act, the MTOFS Act and their respective regulations, or the AusCheck Act).

767. Subsection 54A(1) extends the definition of prescribed administrative action to include the exercise of powers or functions in relation to decisions regarding a firearms licence under State or Territory law. This subsection is modelled on the definition of 'prescribed

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administrative action' in paragraph (h) of section 35 of the ASIO Act. A criminal intelligence assessment that is furnished on AusCheck, a Commonwealth authority, may concern the exercise of powers or functions in relation to decisions regarding a firearms licence under State or Territory law where, for example, the assessment contains a recommendation, advice or opinion, or otherwise refers to the question of whether a firearms licence should be issued, revoked or suspended.

768. Subsection 54A(1)(a) will capture action such as the issuing of a new firearms licence and other actions relating to the issuing of such a licence, including the imposition of conditions.

769. Subsection 54A(1)(b) will capture action such as the renewal, revocation, variation or suspension of an existing firearms licence.

770. Subsection 54A(2) maintains the types of prescribed administrative action relevant to the non-provision or cancellation of an ASIC or MSIC to a person in circumstances where an adverse criminal intelligence assessment has been given.

771. Paragraph 54A(2)(a) will capture action such as the non-provision or cancellation of certain classes of ASICs and MSICs that, once issued, permit the person to have unescorted access to secure areas of security controlled airports and maritime security zones.

772. Paragraph 54A(2)(b) will capture action such as the non-provision or cancellation of certain classes of ASICs and MSICs, based on the person's ability to perform an activity under a certain class of ASIC or MSIC that is controlled or limited. For example, white ASICs and MSICs are issued to individuals who are directly involved in the issuing of identification cards to other individuals.

773. As per subparagraphs 54A(2)(a)(iii) and (2)(b)(iii), the definition of prescribed administrative action will include actions that limit a person's access to a place or ability to perform an activity limited under any other Act prescribed by the ACC Regulations or a legislative instrument under that Act, to allow future prescribed administrative action to be added by regulations. This is important to futureproof and allow for the criminal intelligence assessment function to be expanded in consideration of new or emerging risks for the purposes of other forms of background checks in line section 5 of the Auscheck Act, without requiring legislative amendments. Any expansions would still be subject to legislative scrutiny through changes to the Auscheck Act to facilitate this.

<u>Section 54B Meaning of serious and organised crime</u>

774. This section will define what the term serious and organised crime is intended to capture, specifically in relation to Part III of the ACC Act.

775. This definition of ***serious and organised*** crime intends to capture federal offences that may have been committed, may presently be being committed or may be committed in the future. In recognition of the findings of the Independent Review of the ACIC and associated Commonwealth law enforcement arrangements, the inclusion of this temporal element aims to ensure the ACIC can be responsive to the threat of serious and organised crime, including by operating in an anticipatory or discovery phase in relation to exercising its criminal intelligence assessment function.

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Serious and organised crime

776. Subsection 54B(1) sets out the elements which constitute serious and organised crime. Serious and organised crime involves a certain level of organisation, sophistication and seriousness. Together, these elements broadly speak to the nature and scale of offending that is considered to amount to serious and organised crime. In order for crime to meet the definition of serious and organised crime, it must involve all of the following elements:

- two or more offenders,
- substantial planning or organisation, and
- the use of sophisticated methods or techniques.

777. The element of 'two or more offenders' under paragraph 54B(1)(a) establishes a minimum level of organisation in relation to the criminal activity. The sophisticated and expansive nature of serious and organised crime requires the involvement of more than one person to carry out the criminal activities. Serious and organised crime relies on the cooperation, coordination and organisation of multiple individuals or groups, often with different skills. For example, the importation, distribution and sale of illicit drugs requires coordination of multiple individuals in order circumvent border controls, domestic transport and postal security measures and to launder the proceeds from these crimes.

778. Paragraph 54B(1)(b) establishes that serious and organised crime requires 'substantial planning or organisation'. It is intended to capture circumstances where thorough, detailed and extensive planning or organisation is or has been undertaken in relation to the criminal activity. Serious and organised crime groups are not typically formed for the immediate or opportunistic commission of an offence, and their offending is often ongoing and systemic. However, serious and organised crime groups are also dynamic and have developed fluid organisational structures and modes of operation to carry out criminal activity and evade detection by law enforcement agencies. Criminal actors who engage in serious and organised crime do not need to have formally defined roles for their members, continuity of membership or a developed structure. Increasingly, there has been a shift towards a more flexible organisational model, characterised by 'loose associations', which allows group members to be added or discarded according to organisational needs.

779. Paragraph 54B(1)(c) establishes that serious and organised crime involves 'the use of sophisticated methods or techniques' to support and carry out criminal activity. It is intended to capture actions that include, but are not limited to, use of new and emerging technologies, fraudulent activity (which might include using a fake or stolen identity) implementing concealment techniques to facilitate the trafficking of illicit goods and laundering proceeds of crime through a web of complex financial transactions.

Federal offence

780. Subsection 54B(2) will provide the definition of federal offence, which includes three categories of offences which are punishable by imprisonment for 2 years or more or prescribed by regulations. The categories of offences are:

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- An offence against the law of a Commonwealth. This could include, but is not limited to, an offence under the Criminal Code punishable by imprisonment for 2 years or more.

- An offence against the law of a Territory. This could include, but is not limited to, an offence under the *Crimes Act 1900* (ACT) punishable by 2 years' imprisonment or more.

- An offence against the law of a State that has a federal aspect, as defined in section 4A of the ACC Act.

781. The penalty of imprisonment for a period of two years or more in paragraph 54B(2)(d) sets a minimum level of offending in order for an offence to be captured by the definition of 'serious and organised crime'. The intention of setting a minimum penalty of two years imprisonment is to ensure that only more serious offending is captured. The offence penalty only forms one element of the definition of serious and organised crime, which should be considered as a whole, taking into account all the specified characteristics across subsections 54B(1) and (2).

782. Paragraph 54B(2)(e) provides that offences can be prescribed in the ACC Regulations as a federal offence. This provides the ACIC with a level of flexibility to prescribe certain offences in rare circumstances where the offences are considered to be serious and organised crime but do not otherwise meet the two year penalty period in paragraph 54B(2)(d).

Division 2—Criminal intelligence assessments

783. Division 2 provides for the conduct of criminal intelligence assessments by the ACIC for purposes related to specified background checks, including notification requirements. This Division is somewhat modelled on Division 2A Subdivision B of the ACC Act, with amendments to clarify who may undertake certain actions and the purposes for which the ACIC may make and provide a criminal intelligence assessment, and when certain assessments may be made by way of automated decision-making. Division 2 will also expand the purposes for which the ACIC may make and give a criminal intelligence assessment, including for the purpose of a background check related to a firearms licencing decision.

784. This Division will enable the ACIC to both make and provide criminal intelligence assessments that are not adverse criminal intelligence assessments. It will further enable the ACIC to make adverse criminal intelligence assessments, and the CEO to give adverse criminal intelligence assessments. Elevation of the decision-maker with regards to giving adverse criminal intelligence assessments recognises the importance of such an assessment and the impact it may have on the subject of the assessment.

<u>Section 54C Making criminal intelligence assessments</u>

General

785. Section 54C will enable the ACIC to make criminal intelligence assessments and is similar to section 36B of the ACC Act.

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786. Paragraph 54C(1)(a) introduces the ability of the ACIC to make a criminal intelligence assessment for a firearms background check. Complementary amendments to the AusCheck Act will establish a new AusCheck scheme for the conduct and coordination of firearms background checks. Together, paragraph 54C(1)(a) and the complementary amendments to the AusCheck Act will enable the ACIC to make criminal intelligence assessments for the purposes of firearms background check to inform the firearms licencing decisions of States and Territories.

787. Subparagraphs 54C(1)(b)(i) and (ii) will specify the ATS Act and ATS Regulations, as well as the MTOFS Act and Maritime Transport and Offshore Facilities Security Regulations 2003 (MTOFS Regulations). This means that the ACIC will continue to be able to undertake criminal intelligence assessments as part of the background check process in the ASIC and MSIC schemes, established under the ATS Act and MTOFS Act, and their respective regulations.

788. Subparagraph 54C(1)(b)(iii) will also specify 'an Act prescribed by the regulations for the purposes of subparagraphs 54A(a)(iii) or (b)(iii), or a legislative instrument under that Act'. This will enable the ACIC to conduct a criminal intelligence assessment in relation to any additional background checks within the meaning of section 5 of the AusCheck Act that are prescribed by the ACC Regulations. This seeks to provide additional flexibility in the framework by enabling the criminal intelligence assessments to be made for the purposes of background checks required by emerging schemes as appropriate.

789. The term ***make*** used in subsection 54C(1) is intended to capture all acts in the preparation and finalisation of a criminal intelligence assessment. This would include, for example, the initial steps of conducting a criminal intelligence assessment, through to the formulation and finalisation of the official recommendation, opinion or advice.

790. Subsection 54C(2) provides that the CEO may, by legislative instrument, determine the matters that are to be taken into account when making a criminal intelligence assessment, the manner in which those matters are to be taken into account, and the matters that are not to be taken into account. Enabling further matters to be specified in a legislative instrument will ensure the necessary flexibility to account for the dynamic issues which may become relevant to a criminal intelligence assessment, while also maintaining transparency about the matters to be considered.

791. Subsection 54C(2) does not require such a legislative instrument to be made by the CEO before a criminal intelligence assessment can be conducted by the ACIC under subclause 54C(1).

792. To ensure appropriate oversight of the CEO's power to make a legislative instrument under subsection 54C(2), subsection 54C(3) provides that the CEO must consult with the Minister prior to making the legislative instrument.

793. Subsection 54C(4) will provide the ACIC with discretion to choose to not to make an adverse criminal intelligence assessment if doing so would prejudice law enforcement or intelligence interests (as defined in section 52). This is an important safeguard to ensure both the protection of law enforcement and intelligence efforts. The ACIC may choose not to make an adverse criminal intelligence assessment where, for example, the ACIC holds criminal intelligence with regards to an applicant for an ASIC or MSIC and this intelligence relates to an active law enforcement investigation. In this scenario, making an

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adverse criminal intelligence assessment would likely alert the applicant to the possibility of the law enforcement investigation into the applicant, undermining the investigation. In this situation, this clause will enable the ACIC to not make the assessment until the law enforcement investigation would not be compromised.

794. Subsection 54C(5) will clarify that the ACIC can undertake criminal intelligence assessments on their own initiative at any time provided there is a connection to a current or previous background check of a person that is required or permitted by the Acts specified in subsection 54C(1), or legislative instruments made under those Acts.

795. This will clarify that the ACIC can undertake a criminal intelligence assessment where the ACIC becomes aware of information relating to a person, after an initial criminal intelligence assessment has been undertaken. The ability to conduct criminal intelligence assessments at the ACIC's discretion will enable the ACIC to respond to new intelligence as appropriate, rather than at the point of an application or renewal application.

Certain criminal intelligence assessments that are not adverse

796. Subsection 54C(6) will provide that the ACIC must make a criminal intelligence assessment that is non-adverse if the person is not identified in a search of intelligence held by ACIC that is conducted in accordance with the instructions issued by the CEO under subsection 54C(7). This subclause has been inserted to enable the ACIC to conduct certain criminal intelligence assessments by way of computer.

797. The note after subsection 54C(6) will make clear that the CEO can arrange for the use of computer programs in accordance with this subsection, pursuant to section 54G, which provides additional detail as to automation of decisions.

798. Subsection 54C(7) will require the CEO of the ACIC to make instructions about how a criminal intelligence assessment may be made by a computer. These instructions will provide objective criteria against which the computer would search.

799. These instructions, by their nature, will provide highly sensitive information regarding ACIC criminal intelligence holdings. It would be inappropriate to make this information public as it could greatly prejudice law enforcement and intelligence interests. In particular, publishing instructions concerning how the ACIC undertakes criminal intelligence assessments would enable persons engaged in or associated with serious and organised criminal activities to take steps to reduce the likelihood that those activities will be detected during a background checking process. This would, in turn, increase the likelihood that such persons would gain unescorted access to secure zones of airports, seaports and offshore oil and gas facilities that are subject to the ASIC/MSIC background checking framework, or be able to obtain or maintain a firearms licence, which would substantially compromise the ACIC's role in preventing the advancement of serious and organised crime.

800. For these reasons, as is provided for by subsection 54C(8), the CEO's instructions will not be a legislative instrument and will be exempt from the *Legislation Act 2003*. They will also not otherwise publicly available, however the content of, and adherence to these instructions will be subject to independent oversight by the Commonwealth Ombudsman or, following the commencement of Schedule 1 of the *Strengthening the Oversight of the*

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National Intelligence Community Act 2025, the Inspector-General of Intelligence and Security.

Section 54D Giving of criminal intelligence assessments to Commonwealth agencies

801. This clause seeks to clarify whose role it is to give criminal intelligence assessments, being the ACIC for non-adverse criminal intelligence assessments as per subsection 54D(1), and the CEO to cause an adverse criminal intelligence assessment to be given as per subsection 54D(3).

802. The terminology 'give' is intended to mean to issue, provide, furnish or forward an assessment. The term 'give' is used for consistency with the Acts Interpretation Act 1901 in relation to serving documents and in the *Electronic Transactions Act 1999* in relation to giving information by means of an electronic communication.

Criminal intelligence assessments that are not adverse

803. Subsection 54D(1) provides for the ACIC to give a Commonwealth agency a non-adverse criminal intelligence assessment in respect of a person, in relation to a background check required or permitted by the legislation or legislative instruments prescribed by subsection 54D(1).

804. Subsection 54D(2) will provide that the ACIC must give a criminal intelligence assessment that is non-adverse to the relevant Commonwealth agency if the person is not identified in a search of intelligence held by ACIC that is conducted in accordance with the instructions issued by the CEO (see 54C(6)). This subclause has been inserted to enable the ACIC to give certain criminal intelligence assessments by way of computer, by providing objective criteria against which certain criminal intelligence assessments may be given.

805. This will enable certain non-adverse assessments to be fully automated. For example, a computer may conduct a search of certain ACIC intelligence holdings, and if no results are found in relation to a person in this search in accordance with subsection 54C(6), the computer may then give a 'no adverse result' to Auscheck.

806. The note under subsection 54D(2) will make clear that the CEO can arrange for the use of computer programs in accordance with this subsection, pursuant to Division 3 which provides additional detail as to automation of decisions.

Adverse criminal intelligence assessments

807. Subsection 54D(3) provides that the CEO must cause an adverse criminal intelligence assessment to be given in respect of a person to Commonwealth agencies, in relation to a background check required or permitted by the Acts specified in subsection 54D(3), or legislative instrument made under those Acts.

808. The power for the CEO to cause an adverse criminal intelligence assessment to be given in respect of an individual is non-delegable. It is appropriate for this decision-making power to sit with the CEO, noting that the giving of an adverse criminal intelligence assessment may impact the applicant's ability to work in secure aviation and maritime environments or hold a firearms licence.

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809. If the CEO causes an adverse criminal intelligence assessment to be given, the CEO or the ACIC will give the adverse assessment together with a statement of grounds to the Department of Home Affairs. In the context of a ASIC or MSIC background check, the Secretary of Home Affairs is required to advise the issuing body (r 13(4A) of the AusCheck Regulations) and the person will become ineligible to hold an ASIC or MSIC (r 6.28(1)(ea) of the ATS Regulations; r 6.08C(1)(da) of the MTOFS Regulations) or any other type of access as prescribed by the rules.

810. In the context of a firearms background check, the Secretary of Home Affairs may advise the applicant, being the firearms licencing authority where the person to who the background check relates holds a licence or has applied for one, and the firearms licencing authority would determine a course of action regarding the relevant firearms licencing decision under relevant State or Territory firearms legislation.

811. Subsection 54D(4) provides that, if the CEO considers that giving a Commonwealth agency an adverse criminal intelligence assessment in respect of a person would prejudice law enforcement or intelligence interests, the CEO may decide not to cause the assessment to be given to the agency. This is an important safeguard to ensure both the protection of law enforcement and criminal intelligence efforts.

812. The effect of subsection 54D(4) is that, for example, if the CEO considers that the giving of an adverse criminal intelligence assessment to AusCheck would risk the safety of a criminal informant (as captured in paragraph (c) of the definition of 'law enforcement or intelligence interests' in section 52), then the CEO may decide to not give that assessment. Law enforcement or intelligence interests as defined in section 52 would, for example, encapsulate protecting interests in ongoing collection of criminal intelligence.

813. Subsection 54D(5) outlines the documents that the CEO must ensure are provided to a Commonwealth agency when giving an adverse criminal intelligence assessment. Under this subclause, the CEO is required to provide:

- a statement of grounds for the assessment that meets the requirements of subsection 54D(6), which is taken to be part of the assessment, and
- a copy of a certificate, if any, made by the CEO in relation to the information contained under the assessment under subsection 54D(7).

814. These documents are required to be in writing, to facilitate accurate record-keeping which is essential for accountability, administrative review and oversight purposes.

815. Subsection 54D(6) will outline what must be contained in a statement of grounds for an adverse criminal intelligence assessment. The statement of grounds must contain all of the information relied upon in making the assessment, other than information in relation to which the CEO has made a certificate under subsection 54D(7) and information the disclosure of which would be contrary to a law of the Commonwealth, a State or a Territory.

816. The reference to 'information the disclosure of which would be contrary to a law of the Commonwealth, a State or a Territory' in paragraph 54D(6)(b) ensures that, if any information relied upon is subject to non-disclosure provisions under Commonwealth,

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State or Territory law, the CEO is not required to disclose that information to AusCheck when giving an adverse criminal intelligence assessment.

817. Subsection 54D(7) will provide the CEO with the power to make certificates relating to criminal intelligence assessment information. The CEO may certify, in writing, that he or she is satisfied that disclosing particular information contained in an adverse criminal intelligence assessment to the person in respect of whom the assessment was made would be prejudicial to law enforcement or intelligence interests or security. Law ***enforcement or intelligence interests*** is defined in section 52 and would, for example, encapsulate protecting interests in ongoing collection of criminal intelligence. Security is defined in section 52 to have the same meaning as in the ASIO Act.

818. Subsection 54D(7) provides an important safeguard to ensure both the protection of law enforcement and criminal intelligence efforts, as well as security. The making of such a certificate could occur, for example, where the release of certain information may alert the applicant to the possibility of telecommunications interception by the ACIC or undermining the ACIC's broader intelligence collection efforts.

819. Subsection 54D(8) provides that, if the CEO makes a certificate under subsection 54D(7), the CEO can choose to not to provide the information about which the certificate was made to the relevant Commonwealth agency. If the CEO chooses not to provide such information, this subsection also provides that the Minister, after consulting with the CEO, may direct the CEO to provide the information. The Minister is not required to make this direction in writing.

820. Subsection 54D(9) is a statement of law in respect of certificates, which clarifies that a certificate made by the CEO under subsection 54D(7) is not a legislative instrument and is intended to assist readers. This is because any certificate issued by the CEO under subsection 54D(7) amounts to the application of the law in a particular only in instance to a particular adverse criminal intelligence assessment and is not otherwise captured by subsection 8(1) of the *Legislation Act 2003*.

821. Subsection 54D(10) is a statement of law in respect of ministerial directions under subsection 54D(8), which clarifies that a direction of the Minister under subsection 54D(8), if made in writing, is not a legislative instrument and is intended to assist readers. This is because any such direction does not alter the content of the law but applies it in a particular instance in relation to a particular adverse criminal intelligence assessment and is not otherwise captured by subsection 8(1) of the *Legislation Act 2003*.

<u>Section 54E Person to be notified of adverse criminal intelligence assessment</u>

822. Section 54E is based on previous section 36D of the ACC Act, and will provide for the giving of written notice of an adverse criminal intelligence assessment to the person who is the subject of the assessment.

823. Subsection 54E(1) will require that the Commonwealth agency that has been given an adverse criminal intelligence assessment under subsection 54D(3) must, unless the Minister has made a certificate under subsection 54E(6), provide written notice of the assessment to the person. For example, in the context of a criminal intelligence assessment for a MSIC background check, the Department of Home Affairs will be required to provide written notice of an adverse criminal intelligence assessment it

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receives to the person who is the applicant for, or holder of, the MSIC, unless a certificate has been made under subsection 54D(6) and is in force.

824. The note following subsection 54E(1) highlights that subsections 54E(3), (4) and (5) outline exceptions to the requirement to provide written notice of an adverse criminal assessment to the person who is the subject of the assessment.

Timing and content of notice

825. Subsection 54E(2) provides that the written notice given by the Commonwealth agency to the person who is the subject of an adverse criminal intelligence assessment must meet the following criteria:

- be given to the person within 14 days, starting the day after the assessment is given by the ACIC to the Commonwealth agency, or, if a certificate that was in force in relation to the assessment, and that certificate is subsequently revoked, the date the certificate is revoked
- inform the person that an adverse criminal intelligence assessment has been made about them
- include the statement of grounds for the assessment that was given by the ACIC to the Commonwealth agency consistent with the requirements under subsection 54D(5), excluding any information subject to a certificate under subsection 54D(7), and
- contain information concerning the person's right to apply to the ART for a review of the assessment.

826. Subsection 54E(2) will provide important safeguards to ensure that the subject of an adverse criminal intelligence assessment is given adequate oversight of the reasons why an adverse assessment was made and will enable the applicant's right to seek review.

827. The provision of the written notice to the person will rely upon section 28A of the *Acts Interpretation Act 1901*. This means that the document may be served on a person by delivering it to the person personally; or by leaving it at, or by sending it by pre-paid post to, the address of the place of residence or business of the person last known to the person serving the document. As referenced by this provision, the *Electronic Transactions Act 1999* deals with giving information in writing by means of an electronic communication.

Exception—firearms

828. Subsection 54E(3) provides an exception to the requirement to provide written notice of an adverse criminal intelligence assessment under subsection 54E(1). This subsection disapplies the requirement to provide written notice of an adverse criminal intelligence assessment given in relation to decision under a law of a State or Territory:

- to issue a new firearms licence or take other actions relating to the issue of such a licence, including the imposition of conditions; or
- to renew, revoke, vary or suspend or vary an existing firearms licence.

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829. The effect of subsection 54E(3) is that written notice of an adverse criminal intelligence assessment will not be provided to the individual who is the subject of a firearms background check. The outcome of that adverse criminal intelligence assessment will be provided by the ACIC to AusCheck. This would enable AusCheck to then provide advice to the relevant State or Territory licensing authority, in accordance with arrangements that would be included in the AusCheck Regulations.

830. The result of subsection 54E(3) is the exclusion of merits review for the individual who is the subject of firearms background check, as an application to the ART under subsection 54J(1) can only be made by person who has been given a notice under section 54E. Subsection 54J(4) puts beyond doubt that merits review is not available for an individual who is the subject of adverse criminal intelligence assessment for the purposes of firearms background check. The ACIC will, however, continue to be required to afford the subject of an adverse criminal intelligence assessment relating to a firearms background check with procedural fairness in the making of that assessment. The content of that requirement would depend on the circumstances of each case.

831. These amendments would limit the potential disclosure of sensitive criminal intelligence information in the firearms background-check context, and reflect the position set out in paragraph 1 of the National Firearms Agreement, that 'firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety', rather than an entitlement. All applicants would retain the right to seek judicial review of an adverse criminal intelligence assessment by ACIC.

832. Subsection 54E(4) establishes that an exception to subsection 54E(3) may be prescribed under the ACC Regulations. The effect of subsection 54E(4) is that certain types of firearms background checks may be exempt from the disapplication of notice requirements if specified under the ACC Regulations, and, as a result, require that written notice of an adverse criminal intelligence assessment be provided to the individual who is the subject of that specified type of firearms background check.

Exception—Minister's certificate

833. Subsection 54E(5) provides an exception to the requirement to provide written notice of an adverse criminal assessment under subsection 54E(1) in instances where a certificate has been made by the Minister under subsection 54E(6).

834. Subsection 54E(6) provides that the Minister may certify, in writing, that he or she is satisfied that the withholding of notice to the person of the making of an adverse criminal intelligence assessment in respect of the person is essential to avoid prejudice to law enforcement or intelligence interests or security. ***Law enforcement or intelligence interests*** is defined in section 52 and would, for example, encapsulate protecting interests in relation to ongoing collection of criminal intelligence. Security is defined in section 52 to have the same meaning as in the ASIO Act.

835. Given that the result of subsection 54E(5) is the temporary exclusion of the subject of the assessment's right to seek merits review under section 54J, which could only be for the purpose of protecting and limiting the disclosure of the highly sensitive information, it is appropriate that this power sit at the Ministerial level.

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836. For example, this means that when a certificate is issued under subsection 54E(6) in relation to a criminal intelligence assessment for the purposes of an ASIC or MSIC background check, the Department Home Affairs will be unable to provide a written notice of the adverse assessment to the subject.

837. This power would only be used in extraordinary cases where it is essential to the protection of law enforcement or intelligence interests and security. Serious and organised crime poses a formidable threat to Australia, posing a risk of significant economic and social harm, and a risk of the proliferation of illicit activities that undermine the integrity of Australia, its national security, border operations and prosperity. As a result, subsection 54E(6) is an important safeguard to ensure both the protection of law enforcement and criminal intelligence efforts. Alerting the applicant may undermine the validity of such interests and could have serious impacts on the safety of the integrity of Australia, its national security, border operations and prosperity.

838. Paragraph 54E(7)(a) will provide that, if a certificate is made by the Minister under subsection 54E(6), the Minister must provide a copy of the certificate to the Commonwealth agency to which the adverse criminal intelligence assessment was given under subsection 54D(3). These documents are required to be in writing, to facilitate accurate record-keeping which is essential for accountability, administrative review and oversight purposes.

839. Paragraph 54E(7)(b) will provide that the Minister will additionally need to consider whether to revoke the certificate within 12 months beginning on the day the certificate is issued, and every subsequent 12 months. This is to ensure active consideration is given to the effects the withholding of notice to the person of the making of an adverse criminal intelligence assessment, including their ability to apply for ART review.

840. Subsection 54E(8) is a statement of law in respect of certificates, which clarifies that a certificate made by the Minister under that subsection is not a legislative instrument and is intended to assist readers. This is because any certificate issued by the Minister under subsection 54E(6) amounts to the application of the law in a particular only in instance to a particular adverse criminal intelligence assessment and is not otherwise captured by subsection 8(1) of the *Legislation Act 2003*.

Section 54F Effect of preliminary advice by the ACIC

841. Section 54F is equivalent to previous section 36E of the ACC Act and will govern how any preliminary advice or other communication provided by the ACIC to the Commonwealth agency about the person who is the subject of a criminal intelligence assessment should be treated by the Commonwealth agency.

842. This section will provide that a Commonwealth agency must not take, refuse to take or refrain from taking prescribed administrative action on the basis of any communication in relation to a person made by the ACIC not amounting to a criminal intelligence assessment. The effect of this provision is that any information provided by the ACIC to a Commonwealth agency in relation to a person who is subject to a criminal intelligence assessment, before that assessment has been finalised and formally issued to AusCheck, cannot be relied upon to take prescribed administrative action. For example, if the ACIC were to send an intelligence report containing information relevant to the Department of

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Home Affairs, then Department of Home Affairs is not authorised to use that report as the basis for prescribed administrative action to be taken.

843. Section 54F provides for the protection of any sensitive information the ACIC holds and may choose to share with a Commonwealth agency for purposes other than a criminal intelligence assessment. For example, if the ACIC had intelligence or information that indicated serious and organised crime entities are exploiting a loophole in the AusCheck system, the ACIC might want to share this sensitive information with AusCheck.

844. A final criminal intelligence assessment will be given by the ACIC to the Commonwealth agency after consideration of whether the CEO should certify under subsection 54D(7) that disclosing particular information within the statement of grounds for the assessment would prejudice law enforcement interests or security, and should not be provided to the subject of the assessment; and whether the statement of grounds for the assessment should be withheld from the subject by the Minister under subsection 54E(6).

845. This section provides important protections for the potentially sensitive information the ACIC will consider in making a criminal intelligence assessment, protection of which should be given proper consideration prior to being acted upon. In addition, preventing a Commonwealth agency from taking prescribed administrative action on information other than a criminal intelligence assessment will ensure that a person in respect of who the administrative action is taken will be able to access the review mechanisms under Division 4 of Part III in relation to that ACIC information, subject to certain exceptions.

Division 3—Automation of specified criminal intelligence assessment action

846. Division 3 contains provisions relating the use of automation for certain criminal intelligence assessments.

847. The clauses in this Division are based on the Government's response to recommendation 17.1 of the Royal Commission into the Robodebt Scheme Report and the Commonwealth Ombudsman's Automated Decision Making Better Practice Guide. They are intended to ensure automated systems comply with administrative law principles of legality, fairness, rationality and transparency.

Section 54G Automation of specified criminal intelligence assessment action

848. Section 54G will provide the overarching legislative basis for the use of a computer program to make decisions in relation to specified criminal intelligence assessment actions under new Part III of the ACC Act.

849. Noting the high volume of criminal intelligence assessments made by the ACIC each year, including the expected increase in the volume of assessments required to inform an AusCheck firearms background check, it is necessary for the ACIC to make and give certain criminal intelligence assessments by way of automated decision making (i.e. computer program) in certain circumstances, being where no results are returned against a search for the applicant across certain ACIC intelligence holdings. Where there is no match against those holdings, an automated response of 'no adverse provided' is sent to AusCheck.

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850. Section 54G will not enable all non-adverse assessments to be made by use of a computer program, rather, it enables a particular subset of assessments to be made by use of a computer program. Automated decision-making will only be used where it is beneficial to the applicant, for example, where the result is confirming that is it appropriate for the applicant to access certain secure environments from a criminal intelligence assessment perspective.

851. For example, if the ACIC is conducting a criminal intelligence assessment for the purposes of an ASIC background check, automated processes in isolation would only be used where there is no adverse result returned and the individual is eligible to receive their ASIC, thus receiving access to the aviation environment (subject to any other background checking processes). This result is then provided to AusCheck to inform whether someone is eligible for an ASIC.

852. Alternatively, where there is a match, the ACIC will undertake further analysis of the applicant to determine if a non-adverse criminal intelligence assessment, or an adverse criminal intelligence assessment, is appropriate.

853. Subsection 54G(1) will allow for the CEO to arrange for the use of computer programs to take valid specified criminal intelligence assessment action, as defined under subsection 54G(2), on behalf of the ACIC. The use of computer programs to take specified criminal intelligence assessment action will be subject to the ongoing oversight of the CEO.

854. This will support ongoing monitoring of the operation and the validity of computer programs arranged for use. A written record of any future arrangement ensures appropriate accountability, responsibility and record-keeping for the use of computer programs taking specified criminal intelligence action.

855. Subsection 54G(2) sets out the actions under Part III that can be taken to be 'specified criminal intelligence assessment action' that a computer program may undertake for the purpose of this Part. This will ensure that the parameters of what is considered as specified criminal intelligence assessment action, being actions that are permitted to be taken by use of a computer program, are clear and transparent.

856. The specified criminal intelligence assessment actions are:

- Performing, or refusing or failing to perform, a function or duty under subsection 54C(6), which will provide that the ACIC must make a criminal intelligence assessment that is not-adverse if the person is not identified in a search of intelligence held by the ACIC that is conducted in accordance with the instructions issued by the CEO;

- Performing, or refusing or failing to perform, a function or duty under subsection 54D(2), which will provide that the ACIC must give a criminal intelligence assessment that is non-adverse to the relevant Commonwealth agency if the person is not identified in a search of intelligence held by the ACIC that is conducted in accordance with the instructions issued by the CEO; or

- Doing, or refusing or failing to do, anything related to performing a function or duty under the subsections mentioned in paragraphs 54G(2)(a) or (b).

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857. The definition of specified criminal intelligence assessment action is intended to cover a computer program exercising a power as well as refusing or failing to exercise a power where a computer program has been designed to take such action. Where a decision involves the exercise of discretion or an evaluative judgement (such as where there is a match provided against the ACIC's relevant intelligence holdings, and therefore requires further consideration by a human) this would be classified as the refusal of a computer program to take action. The term 'failure' would include inaction by the computer program, either by design or by fault. Paragraph 54D(2)(c) is intended to extend to the use of computer programs to assist with preliminary procedural or routine aspects leading to the final specified criminal intelligence assessment action.

ACIC is treated as having taken specified criminal intelligence assessment action

858. Subsection 54G(3) will provide that specified criminal intelligence action taken by the operation of a computer program under an arrangement made under subsection 54G(1) is treated, for all purposes, as a criminal intelligence assessment made by the ACIC, for which the ACIC will be wholly accountable.

Substituting specified criminal intelligence assessment action

859. Subsection 54G(4) provides an additional safeguard by allowing the ACIC the discretionary power to take specified criminal intelligence assessment action, or make a criminal intelligence assessment, in substitution for specified criminal intelligence assessment action the ACIC is treated as having taken under subsection 54G(3), should the ACIC consider this action to be incorrect or not the preferred action. This clause would ensure that a person can override or substitute the computer program decision when required.

860. This is intended to make it clear that the ACIC is not limited to making a non-adverse criminal intelligence assessment where the operation of the computer is incorrect or not preferable and may also make a criminal intelligence assessment, including an adverse assessment made by a human decision maker in this circumstance if required. For example, a human may make an assessment in substitution for a specified criminal intelligence assessment where the ACIC new intelligence comes to light due to a rapidly evolving situation, in relation to which the ACIC wishes for a human decision maker to consider the assessment. The proposed subsection also recognises the potential for errors to occur in the decision-making process, including through computer errors, coding or system malfunctions. It is important to enable the substitution of specified criminal intelligence assessment action taken with the assistance of a computer program in these situations. This subclause would ensure that the ACIC can override or substitute a decision made through the use of a computer when required.

861. Subsections 54G(5) and (6) specify when a substituted decision will take effect. By default, paragraph 54G(5)(b) specifies that this will be the day that the occurrence of the original specified criminal intelligence assessment action taken by the operation of the computer program. Paragraph 54G(5)(a) however, alternatively allows the ACIC to specify the day on which the substituted decision can take effect, which as per subsection 54G(6) may be earlier than the day the substituted decision is taken. By not providing a time limit for the substitution power to be exercised, errors can be corrected regardless of when they are identified. This subclause also recognises that there may be a delay between a computer-made decision and the day when the substituted decision occurs.

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ACIC may still take specified criminal intelligence assessment action

862. Subsection 54G(7) specifies that an arrangement under subsection 54G(1) does not prevent the ACIC from taking specified criminal intelligence assessment action. That is, a human would still be able to take specified criminal intelligence assessment action personally, even when there is an arrangement to use a computer program to take specified criminal intelligence assessment action. This is because an arrangement under subsection 54G(1) would not require those actions to be taken by a computer program, but rather would provide an additional method by which criminal intelligence assessment action could be taken.

Arrangement not a legislative instrument

863. Subsection 54G(8) would clarify that an arrangement made under subsection 54G(1) is not a legislative instrument. This is because an arrangement made under subsection 54G(1) would not determine or alter the law but rather would change the method by which a particular decision or administrative action could be taken. Standard transparency and other requirements for legislative instruments would not apply. However, the provisions listed at subsection 54H(1) provide for alternative appropriate safeguards.

Section 54H Oversight and safeguards for automation of specified criminal intelligence assessment action

CEO to ensure specified criminal intelligence assessment action is action that could be validly taken

864. Section 54H will provide oversight measures and safeguards for criminal intelligence assessments involving automation. These measures are in recognition of the Ombudsman's Automated Decision Making Better Practice Guide and are intended to ensure automated systems comply with administrative law principles of legality, fairness, rationality and transparency.

865. Subsections 54H(1) and (2) will outline the duties of, and actions that must be taken by, the CEO to have operational oversight of the use of a computer program taking specific criminal intelligence assessment action.

866. Subsection 54H(1) requires that the CEO take all reasonable steps to ensure that specified criminal intelligence assessment action taken by the operation of a computer is specified criminal intelligence assessment action the ACIC could validly take under this Part. This would require the CEO to ensure the relevant computer program is functioning lawfully and correctly on an ongoing basis. This is a general oversight obligation which would require the CEO to take reasonable steps at a systemic level, such as ensuring there are effective governance structures and audit and assurance mechanisms in place, to ensure the relevant computer program is functioning lawfully and correctly on an ongoing basis.

867. 'Reasonable steps' to ensure that specified criminal intelligence action is action that could be validly taken will depend on the circumstances but could include undertaking regular audits and updates of the computer system to ensure compliance with this Part and ensure system accuracy. Internal quality control systems, audit processes are also likely to be needed by the ACIC. It could also include ensuring that the computer program is

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designed, used and maintained so that it accurately and consistently reflects the sections of the new Part III of the ACIC Act, or ensuring that any computer program generated decisions or actions are consistent with the objects of Part III.

868. Subsection 54H(2) is an additional safeguard to the above. Specifically, in the event that there are regulations prescribing additional things for the CEO to do to ensure that specified criminal intelligence assessment action taken by the operation of a computer program is action that could be validly taken, the CEO must do the things prescribed in such regulations.

869. The note accompanying this subclause will clarify that specified criminal intelligence assessment action may still be invalid even if proposed subsections (1) and (2) are complied with. The purpose of the note is to convey that additional requirements may be set out in regulations for oversight and safeguard steps that the CEO needs to follow. These are procedural and do not go to the fundamental validity of the decision.

870. Subsection 54H(3) will clarify that the specified criminal intelligence assessment actions taken by a computer program under an arrangement under proposed subsection 54G(1), are not rendered invalid due to failure to take 'reasonable steps' in accordance with the requirements set out in proposed subsections 54H(1) and (2). A computer program may generate a valid decision even if the person with oversight failed to take reasonable steps to ensure validity of the action taken. Legal validity will depend on whether the computer program took valid and correct action under this Part. The CEO will have a duty to ensure that this is the case, but this duty is distinct from the general administrative law requirements to make valid decisions. Although a failure to take all reasonable steps will not, in itself, invalidate decisions, there is a substantial risk that a failure to take reasonable steps could result in scenarios where decisions produced by the system are not valid. For example, inadequate controls could result in the computer program not being monitored and updated in line with legislative changes. In this situation, the computer program would become outdated and no longer generate correct decisions.

871. Notification requirements that would otherwise support administrative law principles of transparency and accountability (a key focus of the Commonwealth Ombudsman's Automated Decision Making Better Practice Guide) are not appropriate in this context, as automated decision-making in this context would only ever be beneficial to a person. That is, as soon as any results are returned against a person, a human decision maker is involved, noting the information may inform a potential adverse criminal intelligence assessment. Automated decision-making in isolation would only be used where a 'no adverse' criminal intelligence assessment result is provided to AusCheck.

872. Further, notifying individuals of the operation of computer programs could prejudice law enforcement or intelligence interests. For example, this could tip off other individuals to a forthcoming adverse result, potentially prejudicing law enforcement and intelligence interests (i.e. if two people apply at the same time, and one gets notified of specified criminal intelligence assessment, and the other does not, this could tip off the second person to the fact that the ACIC holds intelligence that may suggest that they may commit serious and organised crime).

873. Additionally, publication/annual report provisions such as those contained within similar automated decision-making frameworks (see section 484K of the *Telecommunications*

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Act 1997) are also not appropriate due to the sensitive nature of criminal intelligence assessments.

Division 4—Review of adverse criminal intelligence assessments

874. Division 4 will outline the review mechanism and processes in place for the review of an adverse criminal intelligence assessment by the ART.

Section 54J Applications to tribunal

875. Section 54J will provide for the making of applications to the ART for review of adverse criminal intelligence assessments made under section 54C. This clause is equivalent to previous section 36F of the ACC Act.

876. Subsection 54J(1) provides that a person can apply to the ART for a review of the decision of the ACIC to make an adverse criminal intelligence assessment in relation to that person under section 54C.

877. Note 1 following subsection 54J(1) outlines that, under section 18 of the ART Act, an application for review by the ART of a decision should generally be made within the period prescribed by rules made under that Act. Nothing in subsection 54J(1) is intended to limit the ART's discretion to extend time in respect of an application for review under section 19 of the ART Act.

878. Note 2 following subsection 54J(1) highlights that subsections 54J(4) and (5) outline an exception to the application for merits review of an adverse criminal assessment.

879. Subsection 54J(2) provides that an application for review of an adverse criminal intelligence assessment must be made by the person who was the subject of the assessment and who has been given notice of the assessment under section 54E.

880. The effect of subjection 54J(2) is that the only entity who can apply for ART review of an adverse criminal intelligence assessment is the person who is the subject of the background check, and only after that person has received notice of the assessment from a Commonwealth agency under subsection 54E(1).

881. In relation to people to who subsection 54E(5) applies because the Minister has certified that the withholding of notice under subclause 54E(6) is essential to the protection of law enforcement interests and/or security , they will not be able to apply to the ART for review of the adverse criminal intelligence assessment unless and until the Minister has made a decision pursuant to paragraph 54E(4)(b) to revoke the subsection 54E(6) certificate. That is because, unless and until the certificate is revoked, the person will not have been given notice of the assessment under section 54E, such that subsection 54J(2) will not be capable of being satisfied. This preserves the subject of an assessment's right to seek review because notice of the decision will not have been given until the certificate has been lifted such that the period for seeking review of the decision will not have commenced.

882. The temporary exclusion of the subject of an assessment's right to seek merits review is necessitated to protect and limit the disclosure of the highly sensitive information that led the Minister to issue the certificate under subsection 54E(6).

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Interaction with the ART Act

883. Subsection 54J(3) will specify that subsection 54J(2) has effect despite subsection 17(1) of the ART Act, which provides that any person whose interests are affected by a decision may apply for ART review of the decision. This accords with the position in relation to the review of security assessments under section 54 of the ASIO Act.

Exception

884. Subsection 54J(4) provides an exception to the application of merits review to a decision to make an adverse criminal assessment under subsection 54J(1). This subsection disapplies merits review to a decision to make an adverse criminal assessment in relation to decision under a law of a State or Territory:

- to issue a new firearms licence or take other actions relating to the issue of such a licence, including the imposition of conditions; or

- to renew, revoke, vary or suspend or vary an existing firearms licence.

885. The effect of subsection 54J(4) is that an individual who is the subject of a firearms background check may not apply to the ART for merits review of a decision to make an adverse criminal assessment. This recognises that ACIC's criminal intelligence assessments are only one input into firearm licencing decision and it would be anomalous for these assessments to be subject to merits review when some States and Territories may not permit review of the final firearms licencing decision.

886. The individual who is the subject of a firearms background check will retain the right to seek judicial review of adverse criminal intelligence assessments. These individuals may also retain the right to seek merits review of final firearms licencing decisions at the State and Territory level, subject to the laws of each jurisdiction.

887. Subsection 54J(5) establishes that an exception to subsection 54J(4) may be prescribed under the ACC Regulations. The effect of subsection 54J(4) is that certain types of firearms background checks may be exempt from the disapplication of merits review if specified under the ACC Regulations. The result of which would be that subject of that specified type of firearms background check would be able to apply to the ART for merits review of the decision to make an adverse criminal assessment against them.

<u>Section 54K Restrictions on further assessments after review</u>

888. Section 54K will restrict the ACIC from making another criminal intelligence assessment in respect of a person, where the ART has made findings upon the review of an adverse criminal intelligence assessment in respect of that person, and the further criminal intelligence assessment is not in accordance with those findings. This section is equivalent to section 36P of the ACC Act.

889. Exceptions to this general obligation apply where either matters occurring after the review provide a basis for conducting a further assessment, or new evidence is available that was not available in the course of the ART review.

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890. Section 54K is an important safeguard because it prevents the ACIC from issuing a new criminal intelligence assessment that contradicts findings made by the ART after a review. This ensures the integrity and finality of the review process, protecting individuals from repeated or inconsistent assessments that could undermine procedural fairness. The clause also provides flexibility by permitting further assessments only when new evidence emerges or circumstances change after the review, balancing fairness with the need to respond to evolving risks of serious and organised crime.

Section 54L Costs

891. Section 54L will enable the ART to make orders that an applicant's costs be paid by the Commonwealth. This clause is equivalent to section 36R of the ACC Act.

892. The Tribunal is by default a no-costs jurisdiction, meaning each party bears their own legal costs. Subsection 54L(1) overrides this default position and will enable the ART to order that the costs reasonably incurred by the applicant in connection with their application under section 54J, or a part of such costs, be paid by the Commonwealth where:

- a person makes an application for a review of an adverse criminal intelligence assessment under section 54J,
- the applicant was, in the opinion of the ART, successful, or substantially successful, in the application for review, and
- the ART is satisfied that it is appropriate to order the payment of costs by the Commonwealth in all the circumstances of the case.

893. Section 54L is an important safeguard because it allows the ART to order that an applicant's legal costs be paid by the Commonwealth when they are successful, or substantially successful, in challenging an adverse criminal intelligence assessment. This provision promotes fairness and access to justice by reducing the financial burden on individuals seeking review of decisions that can significantly impact their ability to work in secure environments. It also promotes the right to effective remedy by ensuring that applicants are not deterred from exercising their review rights due to cost concerns.

Interaction with ART Act

894. Subsection 54L(2) is an avoidance of doubt clause, which will specify that, for the purposes of section 115 of the ART Act about taxing costs, the Commonwealth will be taken to be a party to the proceedings referred to in subsection 54L(1).

Division 5—Secrecy

Section 54M Secrecy—criminal intelligence assessment information

895. Section 54M provides a secrecy provision to prevent any inappropriate disclosure of information contained in or relating to a criminal intelligence assessment. This section is equivalent to section 36Q in the ACC Act.

896. Subsection 54M(1) provides that a person commits an offence if:

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- the person is, or has been, either a member or officer of the ART or an officer or employee of the Commonwealth agency to which an adverse criminal intelligence assessment has been given under subsection 54D(3);
- the person described in paragraph 54M(1)(a) makes a record of, discloses or otherwise uses information;
- the information was obtained by the person by reason of, or in the course of, the person's functions, duties or powers as a member or officer of the ART or an officer or employee of the Commonwealth agency; and
- the information that is recorded, disclosed or otherwise used is, is contained in, or relates to, a criminal intelligence assessment.

897. Paragraph 54M(1)(c) is intended to capture circumstances where a person obtains information in the course of the person's employment as well as where the person inappropriately accesses that information.

898. Paragraph 54M(1)(d) is intended to capture all information contained in a criminal intelligence assessment, including information subject to a CEO certificate under subsection 54D(7), as well as all information used by the ACIC to conduct the assessment and prepared by the ART in reviewing an assessment.

899. The maximum penalty that may be imposed for an offence against subsection 54M(1) is two years' imprisonment, or 120 penalty units, or both. This significant penalty reflects the potentially serious outcomes from the disclosure of the information contained in, or otherwise relating to, a criminal intelligence assessment.

900. Subsection 54M(2) provides exceptions to the offence in subsection 54M(1), which apply where the making of the record, disclosure or use of information contained in, or relating to, a criminal intelligence assessment.

901. Paragraph 54M(2)(a) provides an exception for the purposes of Part III of the ACC Act, meaning that the making of the record, or disclosure or use of information is for the purpose of making and giving a criminal intelligence assessment under Divisions 2 and 3 or for the purpose of conducting a review of an adverse assessment in the ART under Division 4,

902. Paragraph 54M(2)(b) provides an exception for the purposes of, or in connection with, the performance or exercise of the person's functions, duties or powers as a member or an officer of the Tribunal, or as an officer or employee of the agency. This means, for example, that officers in Department of Home Affairs are able to disclose the fact that an adverse assessment has been made, in accordance with subsection 54E(1), or make records about the person who has applied for review of their adverse criminal intelligence assessment, including in preparation for giving submissions and adducing evidence for proceedings in the ART.

903. Note 1 following subsection 54M(2) outlines that, under subsection 13.3(3) of the Criminal Code, a defendant who wishes to rely upon an exception provided by the law creating the offence (such as this section of the ACC Act) bears an evidential burden in relation to the matter. This means that a defendant to an offence under subsection 54M(1) is required to meet an evidential burden that either paragraph 5M(2)(a) or (b) applies.

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904. Note 2 following subsection 54M (2) indicates that section 276 of the ART Act, which relates to the application of confidentiality provisions in other Acts and instruments, also applies in relation to the disclosure of certain information and documents by members and officers of the ART.

905. Note 3 following subsection 54M outlines that section 51 of the ACC Act deals with secrecy requirements for the CEO, members of the Board, staff members, and ACIC Examiners, which is why those officials are not captured by this provision.

Item 25 Section 59A

906. This item amends section 59A to omit 'subsection 36B(2)' and substitute 'subsection 54C(2) or 54D(3)'. This will clarify that proposed subsections 54C(2) or 54D(3) are excluded from the CEO's power to delegate a power, function or duty of the CEO. The provision ensures that the power to make a legislative instrument so as to determine matters relevant the making of a criminal intelligence assessment (subsection 54C(2)) or furnish an adverse criminal intelligence assessment to Commonwealth agencies (subsection 54D(3)), cannot be delegated. These powers must be exercised personally by the CEO.

Australian Security Intelligence Organisation Act 1979

Item 26 Section 4

907. This item inserts new definition specified assessment action, which has the meaning given by section 92E of the Act, and refers to specified action which may be undertaken by use of a computer program.

Item 27 Subsection 35(1) (subparagraph (h)(ii) of the definition of *prescribed administrative action*)

908. This item omits the reference to 'a decision about whether to revoke', and substitutes 'a decision about whether to renew, revoke, vary or suspend'. This would clarify the definition of prescribed administrative action to include a decision about whether to renew, revoke, vary or suspend a firearms licence. This amendment supports ASIO in furnishing a security assessment to AusCheck to facilitate a firearms background check by enabling the assessment to include a recommendation, opinion or advice on whether it would be consistent with the requirements of security for such action to be taken or whether the requirements of security make it necessary or desirable for such an action to be taken.

Item 28 At the end of subsection 36(1)

909. This item inserts a new paragraph (d) at the end of subsection 36(1) of the ASIO Act, which will provide that Part IV of the ASIO Act, other than sections 35, 41 and 42 and subsections 37(1), (3) and (4), does not apply to an adverse security assessment provided in relation to a decision under a law of a State or Territory about whether to issue a firearms licence, or otherwise relating to the issue of such a licence (including in relation to conditions), and a decision about whether to renew, revoke, vary or suspend a firearms licence (as referred to in paragraph 35(1)(h) of the definition of prescribed administrative action, as amended by the Bill).

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910. The purpose of this amendment is to disapply the notification requirements and merits review rights provided under Part IV of the ASIO Act for an adverse or qualified security assessment provided by ASIO to inform a decision in relation to a firearms licence, including an adverse or qualified assessment provided to AusCheck in facilitating a firearms background check. This means that a firearms licence holder or applicant will not receive notice of the assessment, nor will they have the ability to apply to the ART for review of the assessment. This amendment would limit the potential disclosure of sensitive intelligence information in the firearms background-check context, and reflect the position set out in paragraph 1 of the National Firearms Agreement, that 'firearms possession and use is a privilege that is conditional on the overriding need to ensure public safety', rather than an entitlement. ASIO will, however, continue to be required to afford the subject of an adverse or qualified security assessment relating to a firearms background check with procedural fairness, subject to the requirements of security. The content of that requirement would depend on the circumstances of each case.

911. The amendment would avoid any incongruous outcome where a security assessment may be subject to merits review in circumstances where a State or Territory law does not provide for merits review of the ultimate decision to revoke or not issue a firearms licence. Of note, the *Terrorism and Other Legislation Amendment Act 2025* (NSW) has removed the right to merits review by the NSW Civil and Administrative Tribunal (NCAT) for decisions made on firearms licence applications made in NSW, in order to ensure sensitive police intelligence can inform decisions without being subject to scrutiny by the NCAT. In such cases, it is appropriate for the adverse or qualified security assessment furnished by ASIO to AusCheck as part of a firearms background check to also not be subject to merits review. Firearms licence applicants would retain the right to seek judicial review of an adverse or qualified security assessment.

Item 29 After subsection 36(2)

912. This item inserts new subsection (2A) in section 36 to clarify that new paragraph (1)(d) does not apply in the circumstances prescribed by the regulations for the purposes of this subsection. This will enable the making of regulations for the purpose of prescribing circumstances that are excluded from the disapplication of notice requirements and review mechanisms for any adverse or qualified security assessments furnished by ASIO in relation to a decision under a law of a State or Territory to issue a firearms licence, or otherwise relating to the issue of such a licence (including in relation to conditions), and a decision about whether to renew, revoke, vary or suspend a firearms licence. The intent of this provision is to provide a flexible mechanism to re-enliven notification requirements and merits review rights for specific circumstances relating to an adverse or qualified security assessment provided in relation to a firearms licensing decision, as required. Allowing for the circumstances to be prescribed in regulations will also maintain transparency with regard to the circumstances that may be prescribed.

Item 30 Before section 93A

913. This item inserts new sections 92E and 92F into the ASIO Act.

914. Noting the volume of security assessments is expected to significantly increase to support the AusCheck firearms background checks framework, automating the decision-making for specified assessment action (for example, assessments under Parts IV and Part IVA of the ASIO Act) will help to create efficiencies for ASIO in appropriate

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circumstances. It will not enable all decisions to be made by way of a computer program, but rather, enables specified decisions to be made by way of a computer program.

Section 92E Automation of specified assessment action

915. New section 92E provides for the automation of specified assessment action. The purpose of the section is to provide legislative authority for the Director-General to arrange for ASIO to use automated decision-making for specified assessment action, such as specified classes of actions under Parts IV and IVA of the ASIO Act.

916. Noting the high volume of assessments made by ASIO each year, including the expected increase in the volume of assessments required to inform an AusCheck firearms background check, it is necessary for ASIO to make and give certain assessments by way of automated decision making (i.e. computer program) in certain circumstances.

917. Section 92E will not enable all assessments to be made by use of a computer program. Rather, it enables a particular subset of specified assessment action approved by the Minister in an instrument made under section 92F to be made by use of a computer program.

918. Subsection 92E(1) would allow the Director-General to arrange, in writing, for the use, under the oversight of the Director-General, of computer programs to take specified assessment action, as defined under subsection 92E(2). This subsection would provide the overarching legislative basis for the use of a computer program to take certain actions under Parts IV and IVA of the ASIO Act. The use of computer programs to take specified assessment action will be subject to the ongoing oversight of the Inspector General of Intelligence and Security (IGIS).

919. This framework will support ongoing monitoring of the operation and the validity of computer programs that are used. A written record of any arrangement made by the Director-General ensures appropriate accountability, responsibility and record-keeping for the use of computer programs taking specified assessment action.

920. Subsection 92E(2) provides that the Director-General must consult the IGIS before after making an arrangement under subsection 92E(1). This will ensure that the Director-General has, the benefit of the Inspector General's views, informed by the Inspector-General's oversight of the legality, propriety and consistency with human rights of ASIO's conduct, when determine how ASIO should use automated decision-making for the purposes of specified assessment actions.

921. Subsection 92E(2) will require the Director-General to give a copy of the arrangement to the IGIS as soon as practicable after making an arrangement under subsection 92E(1). This will ensure initial scrutiny over ASIO's use of automated decision-making and will further support the IGIS' review of ASIO's compliance with the arrangements, in the course of its ongoing oversight of ASIO's activities.

922. Subsection 92E(4) provides that specified assessment action has the meaning given by an instrument made by the Minister under new section 92F. The instrument provides a mechanism for the Minister to specify the types of actions under Parts IV and IVA of the ASIO Act which are permitted to be taken by use of a computer program under an arrangement made by the Director-General under subsection 92E(1). This provision

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ensures that ASIO's use of automated decision making is subject to Ministerial oversight and control, requiring Ministerial approval of the subset of actions that may be taken through use of computer programs.

Organisation treated as having taken specified assessment action

923. Subsection 92E(5) will provide that specified assessment action taken by the operation of a computer program under an arrangement made under subsection 92E(1) is treated, for all purposes, as action taken by the ASIO, for which ASIO will be wholly accountable.

Substituting specified assessment action

924. Subsection 92E(6) provides a safeguard by allowing ASIO the discretionary power to substitute a specified assessment action for specified assessment action taken by use of a computer program that ASIO is treated as having taken under subsection 92E(5), should ASIO consider the action taken by use of a computer program to be the incorrect or not preferred action. This amendment would ensure that a natural person can override or substitute a decision made by operation of a computer program, when required, so that all specified assessment action taken is the correct and preferred action. For example, a human may make an assessment in substitution for a specified assessment action where new intelligence comes to light due to a rapidly evolving situation which may require ASIO to substitute a non-prejudicial assessment taken by operation of a computer program with a prejudicial assessment made by a human. By not providing a time limit for the substitution power to be exercised, errors can be corrected by ASIO regardless of when they are identified.

925. Subsection 92E(6) also recognises the potential for errors to occur in an automated decision-making process, including through computer errors, coding or system malfunctions. It is important to enable the substitution of specified assessment action taken by use of a computer program in such circumstances.

926. Subsections 92E(7) and 92E(8) specify when a substituted decision will take effect. Paragraph 92E(7)(a) allows ASIO to specify the day on which the substituted decision can take effect, which as per subsection 92E(8) may be earlier than the day the substituted action is taken, but not earlier than the day of the specified assessment action taken by the operation of the computer program.

927. If no day has been specified by ASIO for the substituted decision to take effect, then paragraph 92E(7)(b) provides that the substituted decision takes effect on the day of the specified assessment action taken by the operation of the computer program. These provisions recognise that there may be a delay between a computer-made decision and the day when the substituted decision occurs.

Organisation may still take specified assessment action

928. Subsection 92E(9) specifies that an arrangement under subsection 92E(1) to use a computer program to take specified assessment action does not limit an ASIO officer from taking the same action, as appropriate. Rather, it provides an additional method by which those actions could be taken. For example, an arrangement under subsection 92E(1) could specify that a computer program determine a non-prejudicial outcome for an assessment in certain circumstances. This would not prevent an ASIO employee from

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reaching the same conclusion and taking the same action, or using the information to instead take a different action if, based on their analysis, they consider that to be the more appropriate outcome.

Reference to Organisation

929. Subsection 92E(10) clarifies that a reference to 'the Organisation' in section 92E includes a reference to the Director-General exercising powers or performing functions on behalf of the Organisation.

Arrangement not a legislative instrument

930. Subsection 92E(11) would clarify that an arrangement made under subsection 92E(1) is not a legislative instrument. This is because an arrangement made under subsection 92E(1) would not determine or alter the law but rather would change the method by which a particular action could be taken.

Section 92F Instrument defining specified assessment action

931. Subsection 92F(1) provides that the Minister may make an instrument for the purposes of subsection 92E(4), specifying what types of actions under Parts IV and IVA of the ASIO Act are permitted to be taken by use of a computer program, being specified assessment action.

932. The note following subsection 92F(1) clarifies a reference to 'making' an instrument should be read as including 'varying or revoking' an instrument as per subsection 33(3) of the *Acts Interpretation Act 1901* (Acts Interpretation Act). The application of subsection 33(3) of the Acts Interpretation Act applies equally to subsections 92F(1)–(4).

933. Subsection 92F(2) will require that before making an instrument under subsection 92F(1), the Minister must consult the IGIS. This will ensure that the Minister has the benefit of the Inspector General's views, informed by the Inspector-General's oversight of the legality, propriety and consistency with human rights of ASIO's conduct, when determining whether to authorise ASIO to use automated decision making for a specified purpose.

934. Subsection 92F(3) will require that as soon as practicable after making an instrument under subsection 92F(1), the Minister must notify the Parliamentary Joint Committee on Intelligence and Security (PJCIS) and give a copy of the instrument to the IGIS. Subsection 92F(4) will then permit the PJCIS may request a briefing on the instrument. In combination, these provisions will ensure there is parliamentary scrutiny in respect of the specified assessment actions that the Minister has set out in the instrument.

935. Subsection 92F(5) would clarify that an instrument made under subsection 92F(1) is not a legislative instrument and will be exempt from the *Legislation Act 2003*. As a result, this instrument will not be publicly available. This differs from the standard approach to automated decision-making provisions which will specify the actions for which automated decision-making may be used in primary legislation. However, this differential treatment or an instrument made under subsection 92F(1) is necessary to achieve the legitimate objective of protecting Australia's national security by protecting sensitive information.

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936. An instrument defining the types of actions a computer program takes may contain information that goes to sensitive aspects of ASIO's methodologies and capabilities. Compromise of this information could adversely impact Australia's national security by undermining the quality and effectiveness of ASIO's assessments. As a result, the differential treatment is necessary to achieve the legitimate objective of protecting Australia's national security by protecting sensitive information.

937. Adherence to established administrative law principles will also be ensured by requiring that the content of an instrument made under subsection 92F(1) is subject to independent scrutiny by the PJCIS and the IGIS, as provided for under subsections 92F(3)–(4), and the range of oversight and safeguards under section 92G.

Section 92G Oversight and safeguards for automation of specified assessment action

938. Section 92G provides for oversight measures and safeguards on the use of automated decision-making for specified assessment action (for example, assessments under Parts IV and Part IVA of the ASIO Act). These measures are in recognition of the Ombudsman's Automated Decision Making Better Practice Guide and are intended to ensure automated systems comply with administrative law principles of legality, fairness, rationality and transparency.

939. Subsections 92G(1) and 92G(2) will outline the duties of, and actions that must be taken by the Director-General in oversighting the use of a computer program taking specified assessment action.

Director General to ensure specified assessment action is action that could be validly taken

940. Subsection 92G(1) provides that the Director-General must take all reasonable steps to ensure that specified assessment action taken by the operation of a computer program under an arrangement under subsection 92E(1) is specified assessment action that ASIO can validly take under the ASIO Act. This is a general oversight obligation which would require the Director-General to take reasonable steps at a systemic level, such as ensuring there are effective governance structures and audit and assurance mechanisms in place, to ensure the relevant computer program is functioning lawfully and correctly on an ongoing basis.

941. 'Reasonable steps' to ensure that specified assessment action is action that could be validly taken will depend on the circumstances but could include undertaking regular audits and updates of the computer system to ensure compliance with the ASIO Act and ensure system accuracy. This could also be complemented by internal quality control systems and audit processes. Safeguards could also include ensuring that the computer program is designed, used and maintained so that it accurately and consistently reflects the scope of relevant actions under Parts IV and IVA of the ASIO Act, or ensuring that any computer program generated decisions or actions are consistent with the objects of Parts IV and IVA the ASIO Act.

942. Subsection 92G(2) provides an additional safeguard on subsection 92G(1). Specifically, in the event that there are regulations prescribing additional things for the Director-General to do to ensure that specified assessment action taken by the operation of a computer program is action that could be validly taken, the Director-General must do the things prescribed in the regulations.

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943. An accompanying note under subsection 92G(2) clarifies that specified assessment action may still be invalid, even if proposed subsections 92G(1) and 92G(2) are complied with. The purpose of the note is to convey that additional requirements may be set out in regulations for oversight and safeguard steps that the Director-General needs to follow; however, these are procedural and do not go to the fundamental validity of the decision.

944. Subsection 92G(3) provides that a failure to comply with proposed subsections 92G(1) and 92G(2) does not affect the validity of the specified assessment action taken by the operation of a computer program under an arrangement under subsection 92E(1), in that the specified assessment action will not be rendered invalid. A computer program may generate a valid decision, even if the person with oversight failed to take reasonable steps to ensure validity of the action taken. Legal validity will depend on whether the computer program took valid and correct action under the ASIO Act.

945. The Director-General will have a duty to ensure that this is the case, but this duty is distinct from the general administrative law requirements to make valid decisions. Although a failure to take all reasonable steps will not, in itself, invalidate decisions, there is a substantial risk that a failure to take reasonable steps could result in scenarios where decisions produced by the system are not valid. For example, inadequate controls could result in the computer program not being monitored and updated in line with legislative changes. In this situation, the computer program would become outdated and no longer generate correct decisions.

Reference to Organisation

946. Subsection 92G(4) clarifies that a reference to 'the Organisation' in section 92G includes a reference to the Director-General exercising powers or performing functions on behalf of the Organisation

Item 31 Applications and savings provisions

Australian Crime Commission 2002

947. This item is an application provision clarifying that Division 2A of Part III to the Act, as in force immediately before the commencement of this item, continues to apply on and after the commencement of the item, in relation to a criminal intelligence assessment that was completed before the commencement of this item.

Australian Security Intelligence Organisation Act 1979

948. This item is an application provision clarifying that the amendment of subsection 36(1) of the Act made by the Schedule applies in relation to a security assessment provided in relation to a decision under a law of a State or Territory about whether to issue a firearms licence or otherwise relating to the issue of such a licence (including in relation to conditions), or whether to revoke the firearms licence, on or after the commencement of this item.

Division 3 – Spent etc. convictions

Crimes Act 1914

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Item 32 Subsection 85ZP(3) (note)

949. This item would repeal and replace the note after subsection 85ZP(3). The new note would provide that there are exceptions to subsection 85ZP(3) in sections 85ZZJC (use and disclosure of spent conviction etc. information by ASIO, ACC and other intelligence or security agencies) and 85ZZL (criminal proceedings before the Federal Court of Australia). This would clarify there would be two exceptions to subsection 85ZP(3), with the insertion of new section 85ZZJC.

Item 33 After section 85ZZJ

950. This item would insert new Subdivision BA – Exclusions relating to ASIO and ACC (Divisions 2 and 3) into Division 6 of Part VIIC of the Crimes Act. The new subdivision would include amended section 85ZZJA and new section 85ZZJB.

951. Part VIIC of the Crimes Act sets out the Commonwealth scheme in relation to pardons, quashed convictions and spent convictions. Division 2 of Part VIIC provides that a person is not required to disclose a pardoned or quashed conviction in the specified circumstances. Division 3 of Part VIIC provides that a person is not required to disclose a spent conviction in the specified circumstances. There are a number of existing exclusions, set out in Division 6 of Part VIIC, which enable or require the disclosure of pardoned, quashed and spent conviction information in certain circumstances.

952. New subdivision BA would address gaps in the current exclusion provisions for ASIO and the ACIC. These amendments would support ASIO and the ACIC in their role in background checking for firearms licenses.

Item 34 Section 85ZZJA (heading)

953. This item would amend the heading for section 85ZZJA to reflect the amended scope of the section.

Item 35 Subsection 85ZZJA(1)

954. This item would amend subsection 85ZZJA(1) by omitting ‘Division 3 does’ and substituting with ‘Divisions 2 and 3 do’.

955. Currently, section 85ZZJA provides that Division 3 in relation to spent convictions information does not apply to the disclosure, filing and recording, or use by ASIO or an ASIO officer, of spent conviction information for the purposes of the performance of the functions, or the exercise of the powers, of ASIO or the officer. This ensures ASIO can take spent convictions into account for the purpose of performing its functions.

956. The amendment to subsection 85ZZJA(1) would provide that Division 2 also does not apply to the disclosure, filing and recording, or use by ASIO or an ASIO officer, of pardoned or quashed conviction information for the purposes of the performance of the functions, or the exercise of the powers, of ASIO or the officer. This would ensure ASIO can take quashed and pardoned convictions into account when performing its functions. In addition to spent conviction information, pardoned and quashed conviction information could be extremely pertinent for the performance of ASIO’s functions, which are set out in section 17 of the ASIO Act. For example, where a person’s conviction for a terrorism

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offence is quashed because of legal or procedural error, rather than fresh evidence, the nature of the person's conduct may remain relevant for intelligence purposes.

957. One of ASIO's functions is to advise authorities of the Commonwealth in respect of matters relating to security, in so far as those matters are relevant to their functions and responsibilities (paragraph 17(1)(c) of the ASIO Act). This includes the furnishing of security assessments to Commonwealth agencies (subsection 37(1) of the ASIO Act).

958. It is intended that such a security assessment would form part of the new firearms licencing background checks to be conducted by AusCheck. Information in relation to a person's spent, pardoned or quashed convictions could be highly relevant to the assessment and the background check. For example, the nature of the underlying conduct constituting a dangerous weapons offence may still be highly relevant for the purpose of conducting a security intelligence assessment to support a firearms licence background check where a conviction:

- is spent only because of the passage of time, because the person was sentenced to imprisonment for an offence for less than 30 months and the waiting period for the offence has ended, or
- was quashed because of procedural error, rather than new evidence indicating innocence.

Item 36 Before Subdivision C of Division 6 of Part VIIC

959. This item would insert new section 85ZZJB into new subdivision BA of Division 6 of Part VIIC. This item would also insert new Subdivision BB into Division 6 of Part VIIC of the Crimes Act. New subdivision BB would include new section 85ZZJC.

Section 85ZZJB Exclusions – ACC

960. New section 85ZZJB would provide an exclusion from Divisions 2 (pardoned and quashed convictions) and 3 (spent convictions) of Part VIIC for the purpose of the performance of the ACIC's function in paragraph 7A(da) of the ACC Act, which relates to criminal intelligence assessments.

961. Existing section 85ZZJ provides that Division 3 does not apply in relation to:

- the disclosure of information by a law enforcement agency, or an employee or member of a law enforcement agency, to another law enforcement agency, or an employee of or member of another law enforcement agency, where the disclosure is made in the discharge of the duties of the first-mentioned agency, employee or member; or

- filing or recording information that comes into the possession of a law enforcement agency, or an employee or member of a law enforcement agency, where the filing or recording is done in the discharge of the duties of the agency, employee or member; or

- the use by a law enforcement agency of information relating to the investigation or prevention of crime, where the investigation or prevention of crime is a function of the agency.

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962. The ACIC is covered by this existing exclusion because of the definition of law enforcement agency in section 85ZL of the Crimes Act. However, this exclusion provision does not capture the use, filing or recording, or disclosure of information for the specific purpose of the ACIC performing its criminal intelligence assessment function. New subsection 85ZZJB(1) would ensure the ACIC can take spent, pardoned and quashed convictions into account when performing this specific function.

963. New subsection 85ZZJB(1) would provide that Divisions 2 and 3 do not apply in relation to:

- the disclosure of information to or by the ACC, or an ACC officer, if the disclosure is made for the purposes of the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002*; or

- filing or recording information that comes into the possession of the ACC, or an ACC officer, if the filing or recording is done for the purposes of the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002*; or

- the use by the ACC, or an ACC officer, of information for the purposes of the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002.*

964. The function covered by 7A(da) of the ACC Act, to be inserted by Item 3 of Division 2 of Part 2 of Schedule 4 of this Bill, would be to make and give criminal intelligence assessments, as defined in and in accordance with Part III of the ACC Act.

965. Spent, pardoned and quashed conviction information could be highly pertinent to a criminal intelligence assessment. For example, the nature of the underlying conduct constituting an offence against Division 390 – Criminal associations and organisations may be highly relevant for the purpose of conducting a criminal intelligence assessment, including to support a firearms licence background check, even where a conviction:

- is spent only because of the passage of time, because the person was sentenced to imprisonment for an offence for less than 30 months and the waiting period for the offence has ended, or

- was quashed, for example because of procedural error, rather than fresh evidence indicating innocence.

966. Note 1 after new subsection 85ZZJB(1) would provide that the ACC's function covered by 7A(da) of the Australian Crime Commission Act 2002 relates to criminal intelligence assessments, as a reference for the reader.

967. Note 2 after new subsection 85ZZJB(1) would provide that the ACC is also covered by section 85ZZJ because of the definition of law enforcement agency in section 85ZL, as a reference for the reader.

968. New subsection 85ZZJB(2) would insert a definition of ACC officer for the purposes of new section 85ZZJB to mean:

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- a member of staff of the ACC, or
- the Chief Executive Officer of the ACC.

969. The term 'ACC officer' is used to simplify the language of the Crimes Act and make clear that the CEO of the ACIC and a member of staff of the ACIC can disclose, file or record, or use spent, pardoned and quashed conviction information. The term member of staff of the ACC is defined in section 3 of the Crimes Act.

Subdivision BB – Use and disclose of spent etc. conviction information by ASIO, ACC and other intelligence and security agencies

970. New subdivision BB would insert new section 85ZZJC, which is intended to ensure that the use and disclosure of spent, pardoned and quashed conviction information by particular agencies for particular purposes is permitted, despite any State or Territory law to the contrary.

971. Subsection 85ZP(3) in Division 1 of Part VIIC of the Crimes Act provides that nothing in Part VIIC authorises a person or body to disclose or take into account a conviction of an offence if to do so would contravene any Commonwealth law, State law, Territory law or foreign law. While the exclusion provisions, for example amended section 85ZZJA and new section 85ZZJB, are expressed as exceptions to Divisions 2 and 3 of Part VIIC, they are not expressed as exceptions to Division 1 of Part VIIC. As such, the starting point is that agencies must comply with State and Territory spent, pardoned and quashed conviction laws, to the extent that they apply to those agencies.

972. New subdivision 85ZZJC would expressly permit the use and disclosure of spent, pardoned and quashed conviction information by particular agencies for specified purposes, despite any restrictions in State or Territory legislation. This would displace the operation of subsection 85ZP(3) and complement the provisions excluding the application of Divisions 2 and 3 of Part VIIC. It is intended the amendments expressly give rise to an inconsistency between the Commonwealth law and State and Territory laws, such that the Commonwealth law would prevail to the extent of the inconsistency.

973. To achieve this, new section 85ZZJC would provide express authorisation for particular agencies to use or disclose spent, pardoned and quashed conviction information for specified purposes, and provide that such authorisation has effect despite any law of a State or Territory. This would ensure that a relevant agency would not breach any limitation or prohibition under State or Territory law on the use or disclosure of relevant information, where that use or disclosure is authorised by new section 85ZZJC.

Section 85ZZJC Use and disclosure of spent etc. conviction information by ASIO, ACC and other intelligence or security agencies

974. New subsection 85ZZJC(1) would authorise ASIO or an ASIO officer to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, in the performance of the functions, or the exercise of powers, of ASIO or the officer. It is intended this would allow ASIO or an ASIO officer to take such information into account in the performance of ASIO's functions or exercise of its powers. For example, ASIO may 'use' spent, pardoned or quashed conviction information by taking it into account in conducting a security intelligence assessment.

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975. New subsection 85ZZJC(2) would permit the ACC or an ACC officer to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, in the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002*. It is intended this would allow the ACIC or an ACIC officer to use or disclose such information – for example, by taking it into account, when conducting a criminal intelligence assessment.

976. The Note after new subsection 85ZZJC(2), provides that the ACC's function covered by paragraph 7A(da) of the ACC Act relates to criminal intelligence assessments, as a reference for the reader.

977. New subsection 85ZZJC(3) would permit an intelligence or security agency to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed, for the purpose of assessing prospective employees or members of the agency, or persons proposed to be engaged as consultants to, or to perform services for, the agency or a member of the agency.

978. ***Intelligence or security agency*** is defined in section 85ZL of the Crimes Act to mean:

- ASIO
- the Australian Secret Intelligence Service
- the Australian Signals Directorate
- the Office of National Intelligence
- that part of the Defence Department known as the Defence Intelligence Organisation
- that part of the Defence Department known as the Australian Geospatial-Intelligence Organisation.

979. It is intended that the terms 'prospective employees or members' and 'persons proposed to be engaged as consultants to, or to perform services for' be construed by their ordinary meaning. For example, the provision is intended to enable the use or disclosure of the information when an intelligence or security agency is assessing contractors and other forms of labour hire arrangements. It is not intended that this provision would limit how an intelligence or security agency obtains the information relating to a person's conviction.

980. Information about a spent, pardoned or quashed conviction could be highly pertinent in assessing a person's suitability to work at an intelligence or security agency, noting the nature of their work and the information they handle. For example, where a person was convicted of a serious dishonesty or fraud offence and that conviction is spent because the person was sentenced to imprisonment for less than 30 months and the waiting period has passed, the fact of that spent conviction may remain relevant when considering whether the person should be employed or engaged by an intelligence or security agency, where the highest levels of trust in staff is required.

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981. New subsections 85ZZJC(4)-(6) would permit ASIO, the ACIC and intelligence or security agencies to use or disclose information relating to a person having been charged with and found guilty of an offence but discharged without conviction for particular purposes.

982. Subsection 85ZR(2) of the Crimes Act provides that if a State law deems a person never to have been convicted of an offence in particular circumstances for a particular purpose, a Commonwealth authority shall also treat the person never to have been convicted of the offence for a corresponding purpose. Subparagraph 85ZS(1)(d)(ii) prohibits the consideration of the fact that a person has been charged with or convicted of an offence captured by section 85ZR. Taken together, this means the fact that a person has been found guilty of an offence but discharged without conviction cannot be taken into account or disclosed.

983. An example of where this is enlivened is subsection 184(2) of the *Youth Justice Act 1992* (Qld), which provides that a finding of guilt without the recording of a conviction is not taken to be a conviction for any purpose. In *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v Thornton* (2023) 276 CLR 136, the majority held that subsection 184(2) of the *Youth Justice Act 1992* (Qld) was a State law that engaged subsection 85ZR(2) of the Crimes Act, because it deemed a person to have never been convicted of an offence. As such, this information cannot be disclosed or taken into account, because of the operation of paragraph 85ZS(1)(d).

984. New subsections 85ZZJC(4)-(6) would expressly authorise ASIO, the ACIC and intelligence or security agencies to use and disclose such information in for particular purposes, to reflect the relevance of this information.

985. New subsection 85ZZJC(4) would permit ASIO or an ASIO officer to use or disclose information relating to a person having been charged with and found guilty of an offence but discharged without conviction, in the performance of the functions, or the exercise of the powers, of ASIO or the officer.

986. New subsection 85ZZJC(5) would permit the ACC or an ACC officer to use or disclose information relating to a person having been charged with and found guilty of an offence but discharged without conviction, in the performance of the ACC's function covered by paragraph 7A(da) of the ACC Act. Paragraph 7A(da) of the ACC Act would relate to criminal intelligence assessments.

987. New subsection 85ZZJC(6) would permit an intelligence or security agency to use or disclose information relating to a person having been charged with and found guilty of an offence but discharged without conviction, for the purpose of assessing prospective employees or members of the agency, or persons proposed to be engaged as consultants to, or to perform services for, the agency or a member of the agency. It is not intended that this provision would limit how an intelligence or security agency obtains the information relating to a person's conviction.

988. It is intended that the terms 'prospective employees or members' and 'persons proposed to be engaged as consultants to, or to perform services for' be construed by their ordinary meaning. For example, the provision is intended to enable the use or disclosure of the information when an intelligence or security agency is assessing contractors and other forms of labour hire arrangements.

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989. New subsection 85ZZC(7) would provide that nothing in new section 85ZZC limits any other power of ASIO, the ACC or an intelligence and security agency to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed. This would make clear that new section 85ZZC is not intended to be the sole source of statutory authority for the use of convictions information, and use permitted under any other law (for example, the ASIO Act or ACC Act) is not limited by new section 85ZZC.

990. New subsection 85ZZJC(8) would provide that section 85ZZJC has effect despite subsection 85ZP(3) and Divisions 2 and 3 of the Crimes Act, and despite any law of a State or Territory. This new subsection is intended to disapply subsection 85ZP(3) from operating where ASIO, the ACIC, or intelligence or security agencies use or disclose the information for the relevant purposes set out in section 85ZZJC.

991. New subsection 85ZZJC(9) would insert a range of definitions for the purposes of new section 85ZZJC. The definitions of ACC officer, ASIO and ASIO officer would have the same meaning as in other provisions of Part VIIC.

Item 37 Application provisions

992. This item provides that the amendments made by Division 3 of Part 2 of Schedule 4 apply in relation to the use or disclosure of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement. This provision would clarify that the authorisations to use or disclose apply to information regardless of when that information was obtained by the agency. It is intended that the term 'obtained' be read broadly and would include information that is received and gathered.

Division 4—Consequential amendments

Administrative Decisions (Judicial Review) Act 1977

Item 38 Paragraph (wa) of Schedule 1

993. This item amends paragraph (wa) of Schedule 1 to the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act) to omit the reference to 'Division 2A of Part II' and substitute a reference to 'Part III'. The effect of this is that any decision made by the ACIC, CEO or the Minister under Part III of the ACC Act are excluded from judicial review under the ADJR Act.

994. The exclusion of decisions made under Part III is necessary as the public review of such decisions would likely involve the disclosure of highly sensitive information, which could be prejudicial to law enforcement or intelligence interests. This could include, for example, sensitive information surrounding the ACIC's technical capabilities, and sensitive information received from State and Territory law enforcement agencies.

995. This amendment does not have the effect of entirely excluding judicial review of decisions under Part III to the ACC Act. A person who is the subject of a decision under Part III is still entitled to seek judicial review under subsection 75(v) of the Constitution or section 39B of the *Judiciary Act 1903*.

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Administrative Review Tribunal Act 2024

Item 39 Section 4 (definition of *criminal intelligence assessment*)

996. This item amends the definition of 'criminal intelligence assessment' in section 4 to replace the reference to 'Division 2A of Part II' with 'Part III'. This clarifies that references to a criminal intelligence assessment throughout the *Administrative Review Tribunal Act 2024* (ART Act) refer to an adverse criminal intelligence assessment within the meaning of the new criminal intelligence assessment framework in Part III to the ACC Act.

Item 40 Section 4 (subparagraph (b)(iii) of the definition of *exempt security record decision*)

997. This item amends the definition of 'exempt security record decision' in subparagraph 4(b)(iii) to replace the reference to 'Division 2A of Part II' with 'Part III'. This clarifies that references to 'exempt security record decision' throughout the ART Act include a reference to a decision of the National Archives of Australia in respect of access to a record of the ACIC relating to a criminal intelligence assessment within the meaning of the new criminal intelligence assessment framework in Part III to the ACC Act.

Item 41 Section 4 (definition of *law enforcement interests*)

998. This item repeals the current definition of 'law enforcement interests' in section 4. A new defined term 'law enforcement or intelligence interests' will be inserted in section 4.

Item 42 Section 4

999. This item inserts a new defined term 'law enforcement or intelligence interests' in section 4. This term is defined to have the same meaning as provided in Part III to the ACC Act. 'Law enforcement or intelligence interests' is defined broader than 'law enforcement interests' to include in paragraph 52(a) the consideration of 'avoiding prejudice'.

Item 43 Subsection 141(3) (table item 1, column 2)

1000. This item amends subsection 141(3) (table item 1, column 2) by replacing the reference to a certificate under 'subsection 36C(5)' with the equivalent 'subsection 54D(7)' in new Part III to the ACC Act. This amendment aligns the ART Act with new Part III of the ACC Act.

1001. Section 141 sets out provisions relating to documents an agency head must provide in proceedings in the ART for the review of certain intelligence and security decisions. Subsection 141(2) provides general requirements, while the table in subsection 141(3) details the specific documents agency heads are required to provide where a non-disclosure certificate has been issued under another Act. Currently, table item 1, column 2 refers to a 'Certificate under subsection 36C(5) of the *Australian Crime Commission Act 2002*' and column 3 outlines the documents required where such a certificate has been issued.

Item 44 Paragraph 156(2)(b)

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1002. This item repeals and replaces paragraph 156(2)(b) with ‘law enforcement or intelligence interests’. This ensures that the Tribunal's duty in section 156 includes a duty not to communicate or make available to a person information that would prejudice ‘law enforcement and intelligence interests’. This amendment will align the ART Act with new Part III to the ACC Act.

Item 45 Paragraph 158(3)(b)

1003. This item replaces the term ‘law enforcement interests’ in paragraph 158(3)(b) with ‘law enforcement or intelligence interests’. This enables the responsible Minister to issue a security certificate, certifying that disclosing evidence or making a submission would be contrary to the public interest because, in the case of a criminal intelligence assessment decision, it would prejudice law enforcement or intelligence interests. This amendment aligns the ART Act with new Part III to the ACC Act.

1004. A security certificate confirms that neither the applicant in a proceeding, nor their representative (unless Ministerial consent has been given), is allowed to be present when the evidence is adduced or the submission is made (subsection 158(4)). Security certificates cannot be issued in exempt security record decision proceedings (subsection 158(1)).

Item 46 Paragraph 161(2)(c)

1005. This item replaces the term ‘law enforcement interests’ in paragraph 161(2)(c) with ‘law enforcement or intelligence interests’. In a proceeding for the review of a criminal intelligence assessment, this enables the responsible Minister to issue a public interest certificate, certifying that the disclosure of specified information or a document would be contrary to the public interest because it would prejudice law enforcement and intelligence interests. This amendment aligns the ART Act with new Part III to the ACC Act.

1006. Subject to the requirements in section 161, a public interest certificate requires the Tribunal to do all things necessary to ensure that the specified information or a document is not disclosed or given to persons, other than those listed in subparagraphs 161(5)(a)(i)-(iii). Security certificates cannot be issued in exempt security record decision proceedings (paragraph 161(1)(a)).

Item 47 Subsection 162(1) (table item 1, column 2)

1007. This item amends subsection 162(1) (table item 1, column 2) by replacing the reference to ‘subsection 36C(5)’ with the equivalent ‘subsection 54D(7)’ in new Part III. This amendment clarifies that a non-disclosure certificate issued under new subsection 54D(7) in Part III to the ACC Act does not excuse a person from disclosing information, or giving a document, to the Tribunal for the purposes of the proceeding if the person is required by or under this Act to do so. This amendment aligns the ART Act with new Part III to the ACC Act.

1008. Section 162(3) provides that the Tribunal must do all things necessary to ensure that the information or document is not disclosed or given to persons other than those listed in subparagraphs 162(3)(a)(i)-(iii).

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AusCheck Act 2007

Item 48 Paragraph 5(ba)

1009. This item amends the definition of 'background check' in section 5(ba) by replacing the reference 'as defined in section 36A' with 'within the meaning of Part III'. This amendment clarifies that references to a background check in relation to an individual includes references to an assessment of information relating to matters relevant to a criminal intelligence assessment, as defined in Part III to the ACC Act. This aligns the AusCheck Act with new Part III to the ACC Act.

AusCheck Regulations 2017

Item 49 Section 4 (definition of *adverse criminal intelligence assessment*)

1010. This item amends the definition of 'adverse criminal intelligence assessment' in section 4 to refer to the new definition in Part III to the ACC Act. This aligns the AusCheck Regulations with new Part III to the ACC Act.

Item 50 Section 4 (definition of *high risk criminal intelligence assessment*)

1011. This item repeals the definition of 'high risk criminal intelligence assessment' in section 4. This definition included an additional threshold to categorise an adverse criminal intelligence assessment as a 'high risk criminal intelligence assessment' if the person issuing the assessment reasonably believed that preventing the individual from holding an ASIC or MSIC was necessary or desirable to prevent the use of aviation, or maritime transport or an offshore facility, in connection with serious and organised crime.

1012. This definition and the associated threshold are no longer required. The threshold 'adverse criminal intelligence assessment', which is already utilised in the AusCheck framework, will be used in place of 'high risk' throughout the AusCheck Regulations.

1013. By repealing this definition, this item aligns the AusCheck Regulations with new Part III to the ACC Act.

Item 51 Subsection 13(4A) (heading)

1014. This item amends the heading to subsection 13(4A) by replacing the reference to 'high risk' with reference to 'adverse'. Consistent with item 20B, the definition of 'high risk criminal intelligence assessment' will be repealed. This amendment relates to item 20D, which substitutes 'high risk criminal intelligence assessment' with an 'adverse criminal intelligence assessment' for the purpose of that subsection.

Item 52 Subsection 13(4A)

1015. This amendment replaces 'high risk' in subsection 13(4A) with 'adverse'. This will clarify that the Secretary must advise the issuing body whether or not the Department has been given an adverse criminal intelligence assessment of the individual, rather than a 'high risk criminal intelligence assessment'. The threshold of 'high risk criminal intelligence assessment' is no longer required.

Item 53 Subsection 14(6) (heading)

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1016. This item amends the heading to subsection 14(6) by replacing the reference to 'high risk' with a reference to 'adverse'. Consistent with item 20B, the definition of high risk criminal intelligence assessment will be repealed. This amendment relates to item 20F which substitutes 'high risk criminal intelligence assessment' with 'an adverse criminal intelligence assessment' for the purpose of that subsection.

Item 54 Subsection 14(6)

1017. This item replaces ‘high risk’ in subsection 14(6) with ‘adverse’. This ensures that subsection 14(6) relates to the threshold of ‘adverse criminal intelligence assessment’, as the threshold of ‘high risk criminal intelligence assessment’ is no longer required.

Item 55 Subparagraph 23(b)(iia)

1018. This item replaces ‘high risk’ in subparagraph 23(b)(iia) with ‘adverse’ as a consequence of items 20A and 20B. This will clarify that the Secretary must advise the issuing body for the ASIC or MSIC whether or not the Department has been given an adverse criminal intelligence assessment of the individual, rather than a ‘high risk criminal intelligence assessment’. The threshold of ‘high risk criminal intelligence assessment’ is no longer required.

Item 56 In the appropriate position in Part 5

1019. This item inserts Division 9—Combatting Antisemitism, Hate and Extremism Act 2026 into the AusCheck Regulations. This item sets out how amendments to sections 13, 14 and 23 of the AusCheck Regulations, made by Division 3 of Part 2 of Schedule 4 of the Bill apply to background checks.

1020. Subsection 1 provides that amendments apply to any application for a background check made on or after commencement of this section; and any application for a background check made before commencement that had not yet been completed at that time.

1021. This ensures that updated provisions governing advice about background checks and the terminology changes, particularly changing reference from ‘high risk criminal intelligence assessment’ to ‘adverse criminal intelligence assessment’ apply consistently to all checks that are in progress or lodged on or after commencement.

1022. Subsection 2 ensures the former ‘high risk criminal intelligence assessment’ terminology is not retained after commencement. For background checks already underway at commencement, subsections 13(A) and 14(6) and subparagraph 23(b)(iia), as in force after commencement, are to be read as if any reference as if a reference to ‘adverse criminal intelligence assessment’ included a reference to ‘high risk intelligence assessment’ (as previously defined).

1023. This transitional rule ensures continuity and avoids any gap in interpretation for checks initiated using the previous terminology. In effect, this item maintains the integrity of the background checking process, ensuring consistent outcomes and advice requirements apply across all relevant applications and cause minimal disruption for decision makers and applicants.

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Australian Border Force Act 2015

Item 57 After paragraph 46(j)

1024. This item inserts paragraph 46(ja) into the list of permitted purposes set out in section 46. This provides that a purpose relating to the ACIC's functions under Part III of the ACC Act is a permitted purpose for the purposes of sections 44 and 45 of the *Australian Border Force Act 2015* (ABF Act). This enables the ABF to disclose information in accordance with sections 44 and 45 for a purpose relating to the performance of the ACIC's criminal intelligence assessment function covered by paragraph 7A(da) of the ACC Act.

1025. Sections 44 and 45 of the ABF Act outline requirements for the disclosure of both Immigration and Border Protection information that does, and does not, contain personal information, to certain bodies and persons and in accordance with agreements.

Aviation Transport Security Act 2004

Item 58 Section 4 (simplified outline)

1026. This item replaces 'serious crime' with 'serious and organised crime' in the simplified overview at section 4 of the ATS Act. This clarifies that Part 3 of the ATS Act relates to requirements directed at safeguarding against unlawful interference with aviation and preventing the use of aviation in connection with serious crime and organised crime.

Item 59 Section 9

1027. This item inserts the new defined term 'serious and organised crime' in section 9, which has the same meaning as in new section 54B of Part III to the ACC Act. This term will replace the term 'serious crime' in the ATS Act.

1028. This amendment affects provisions in the ATS Act that enable certain types of regulations to be prescribed, or administrative decisions to be made, for the purpose of preventing the use of aviation in connection with serious crime.

1029. This amendment incorporates the new definition of 'serious and organised crime' for the purpose of the relevant aviation security provisions.

Item 60 Section 27 (simplified outline)

1030. This item replaces 'serious crime' with 'serious and organised crime' in the simplified overview at section 27 of Part 3, consistent with item 21B. This clarifies that regulations under Division 4A of this Part will 'prescribe requirements for the purposes of preventing the use of aviation in connection with serious and organised crime'.

Item 61 Division 4A of Part 3 (heading)

1031. This item repeals the Division 4A heading 'Serious crime' and replaces it with 'Serious and organised crime', consistent with item 21B.

Item 62 Section 38AA

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1032. This item replaces 'serious crime' in section 38AA with 'serious and organised crime'. This clarifies that the purpose of Division 4A of Part 3 is 'to prevent the use of aviation in connection with serious and organised crime'.

Item 63 Subsection 38AB(1)

1033. This item replaces 'serious crime' in subsection 38AB(1) with 'serious and organised crime', consistent with item 21B. This clarifies that regulations made under section 38AB may, for the purposes of preventing the use of aviation in connection with serious or organised crime, prescribe requirements in relation to areas and zones established under Part 3.

1034. Section 38AB enables, for example, the making of regulations requiring background checks for individuals applying to holding an ASIC. The ability to make such regulations is necessary given that holding an ASIC allows personnel access to secure aviation zones or areas. This mitigates the risk of personnel using access to secure aviation zones or areas in connection with serious and organised crime.

Item 64 Subsection 44C(1)

1035. This item replaces 'serious crime' in subsection 44C(1) with 'serious and organised crime', consistent with item 21B. This clarifies that regulations for examining and clearing cargo under section 44C may be prescribed for the purposes of preventing the use of aviation in connection with serious and organised crime.

1036. Personnel who are examining and clearing cargo are required to hold an ASIC and have therefore been subject to a criminal intelligence assessment. Managing personnel risk through a criminal intelligence assessment mitigates the risk serious and organised crime presents to cargo operations in aviation.

Aviation Transport Security Regulations 2005

Item 65 Subregulation 6.01(1) (definition of *adverse criminal intelligence assessment*)

1037. This item amends subregulation 6.01(1) by replacing the reference to 'section 36A' with 'Part III' in the definition of 'adverse criminal intelligence assessment'. This clarifies that where the term 'adverse criminal intelligence assessment' is used throughout the ATS Regulations, it has the same meaning as in section 54 of Part III to the ACC Act.

Item 66 Subregulation 6.01(1) (note to the definition of *adverse criminal intelligence assessment*)

1038. This item amends the note to the definition of 'adverse criminal intelligence assessment' in subregulation 6.01(1). This amendment replaces the reference to 'section 36D and Subdivision C of Division 2A of Part II' with the equivalent references, 'section 54E and Division 4 in the new Part III' to the ACC Act.

1039. This amendment aligns the ATS Regulations with new Part III to the ACC Act, as provisions related to a person's notification and review rights in relation to an adverse criminal intelligence assessment will be located in section 54E and Division 4 of Part III to the ACC Act.

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Item 67 Paragraph 6.27AA(3)(c)

1040. This item replaces 'serious crime' with 'serious and organised crime in paragraph 6.27AA(3)(c), consistent with item 21B. This clarifies that the Secretary may apply to the Secretary of Home Affairs for a background check on a person who is an applicant for an ASIC, or the holder of an ASIC, if Secretary considers on reasonable grounds that there is a risk that the person would use aviation in connection with serious and organised crime.

Item 68 Paragraph 6.28(1)(ea)

1041. This item replaces 'person issuing the assessment' with 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.28(1)(ea). This amendment clarifies that, for the purpose of issuing an ASIC, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that an ASIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of aviation in connection with serious and organised crime.

Item 69 Paragraph 6.28(1)(ea)

1042. This item replaces 'serious crime' with 'serious and organised crime in paragraph 6.28(1)(ea), consistent with item 21B. This clarifies that one of the conditions for the issue of an ASIC is that the issuing body has been notified in writing by the Secretary that the Department has not been given an adverse criminal intelligence assessment indicating that the ACIC CEO reasonably believes that preventing the person proposed to be issued an ASIC from holding an ASIC is necessary or desirable to prevent the use of aviation in connection with serious and organised crime.

Item 70 Paragraph 6.28(4G)(a)

1043. This item inserts a reference to paragraph 6.28(1)(ea) into paragraph 6.28(4G)(a). This requires the issuing body to ensure that a person meets the criteria in paragraph 6.28(1)(ea), in addition to paragraphs 6.28(1)(a), (b) and (c), before an ASIC can be issued under subregulation 6.28(4A) or (4D). The amendment ensures that an issuing body must not issue an ASIC if it has not been notified in writing by the Secretary that an ASIC applicant has not been given an adverse criminal intelligence assessment.

1044. Under regulation 6.28, an issuing body may only issue an ASIC to a person if the criterion listed in paragraphs 6.28(1)(a) – (f) is met. Subregulation 6.28(4G) sets out the requirements that must be met before an ASIC can be issued under subregulation (4A) or (4D).

Item 71 Subparagraph 6.42A(1)(b)(ii)

1045. This item replaces 'serious crime' with 'serious and organised crime' in subparagraph 6.42(1)(b)(ii), consistent with item 21B. This clarifies that one of the conditions for which the Secretary may, in writing, direct an issuing body to suspend an ASIC is if the holder of the ASIC has been convicted of an aviation-security-relevant offence, but has not yet been sentenced for the offence, and the Secretary reasonably considers that there is a risk that the holder of the ASIC may use aviation in connection with serious and organised crime.

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Item 72 Paragraph 6.43(2)(bb)

1046. This item replaces 'person issuing the assessment' with the 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.43(2)(bb). This amendment clarifies that, for the purpose of cancelling an ASIC, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that an ASIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of aviation in connection with serious and organised crime.

Item 73 Paragraph 6.43(2)(bb)

1047. This item replaces 'serious crime' with 'serious and organised crime' in paragraph 6.43(2)(bb), consistent with item 21B. This clarifies that an issuing body must immediately cancel an ASIC it has issued if the Secretary has notified it in writing that the Department has been given an adverse criminal intelligence assessment indicating that the ACIC CEO reasonably believes that preventing the holder from holding an ASIC is necessary or desirable to prevent the use of aviation in connection with serious and organised crime; and, one or more conditions listed in paragraphs 6.43(2)(c) – (h) is met.

Item 74 Subregulation 6.44(2)

1048. This item replaces 'serious crime' with 'serious and organised crime' in subregulation 6.44(2) consistent with item 21B. This clarifies that where an issuer cancels an ASIC, visitor identification card or temporary aircrew card in the circumstances outlined in subregulation 66.4(1) and provides the Secretary with the required information in subregulation 6.44(1), the Secretary may pass this information on to other issuers if the Secretary thinks that doing so will help to prevent unlawful interference with aviation or the use of aviation in connection with serious and organised crime.

Item 75 In the appropriate position in Part 10

1049. This item inserts Division 25—Amendments made by the Combatting Antisemitism, Hate and Extremism Act 2026 into the ATS Regulations.

1050. This item describes the application of amendments made by this Bill. It clarifies the temporal scope of each amendment to ensure certainty for issuing bodies and holders of ASICs. It notes that the application of thresholds referenced in Part III of the ACC Act:

- amendments to paragraph 6.27AA(3)(c) (background check application criteria) apply to applications made on or after commencement.

- amendments to regulation 6.28 (criteria for issuing ASICs) apply to ASICs issued on or after commencement.

- amendments to subparagraph 6.42A(1)(b)(ii) (Secretary's suspension directions) applies to directions made on or after commencement.

- amendments to paragraph 6.43(2)(bb) (cancellation of ASICs based on adverse criminal intelligence assessments) apply to cancellations occurring on or after commencement.

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- amendments to subregulation 6.44(2) (cancellation of ASICs, VICs and TACs) applies to cancellations occurring on or after commencement, regardless of when the card was issued.

1051. The new requirements, including the clarified threshold for the ACIC CEO's reasonable belief and the updated terminology referring to 'serious and organised crime' apply prospectively, without affecting decisions made under the previous framework.

Crimes Act 1914

Item 76 After paragraph 3ZQU(1)(d)

1052. This item inserts paragraph 3ZQU(1)(da) in subsection 3ZQU(1) of the Crimes Act to include 'the performance of the ACC's function covered by paragraph 7A(da) of the *Australian Crime Commission Act 2002'* in the list of purposes for which things seized under Part IAA, or the original or a copy of a document produced under Division 4B of the Crimes Act, may be used and shared. This amendment is intended to enable a constable or Commonwealth officer to use or share material seized under a section 3E search warrant for the purpose of making or giving a criminal intelligence assessment under new Part III to the ACC Act. This would enable the ACIC to use material seized under a section 3E search warrant if it is necessary for the purpose of making or giving a criminal intelligence assessment including material that has already been made available to the ACIC by a constable or Commonwealth officer of another agency under subsection 3ZQU(1).

Maritime Transport and Offshore Facilities Security Act 2003

Item 77 Section 10

1053. This item inserts a new definition of 'serious and organised crime' in section 10, which has the same meaning as in new section 54B of Part III to the ACC Act. This term will replace the term 'serious crime' in the ATS Act and MTOFS Act frameworks in order to better align these frameworks with the ACC Act.

1054. This amendment affects provisions in the MTOFS Act that enable certain types of regulations to be prescribed, or administrative decisions to be made, for the purpose of preventing the use of maritime transport or offshore facilities in connection with serious crime.

1055. This amendment incorporates the new definition of 'serious and organised crime' for the purpose of the relevant maritime security provisions.

Item 78 Section 101 (simplified outline)

1056. This item replaces 'serious crime' with 'serious and organised crime' in the simplified overview of at section 101, consistent with item 22A. This clarifies that regulations under Division 6 will 'prescribe requirements for the purposes of preventing the use of maritime transport or offshore facilities in connection with serious and organised crime.'

Item 79 Division 6 of Part 6 (heading)

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1057. This item repeals the Division 6 heading, 'Serious crime' and replaces it with 'Serious and organised crime', consistent with item 22A.

Item 80 Section 113E

1058. This item replaces 'serious crime' in section 113E with 'serious and organised crime', consistent with item 22A. This clarifies that the purpose of Division 6 of Part 6 is 'to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime'.

Item 81 Subsection 113F(1)

1059. This item replaces 'serious crime' in subsection 113F(1) with 'serious and organised crime', consistent with item 22A. This clarifies that regulations may be prescribed in relation to zones established under this Part 6, for the purposes of preventing the use of maritime transport or offshore facilities in connection with serious and organised crime.

1060. Section 113F enables, for example, the making of regulations requiring background checking for individuals applying to holding an MSIC. The ability to make such regulations is necessary given that holding an MSIC allows personnel access to secure maritime zones or areas. This mitigates the risk of personnel using access to secure maritime zones or areas in connection with serious and organised crime.

Maritime Transport and Offshore Facilities Security Regulations 2003

Item 82 Subregulation 6.07B(1) (definition of *adverse criminal intelligence assessment*)

1061. This item amends the definition of 'adverse criminal intelligence assessment' in subregulation 6.07B(1) by replacing 'section 36A' with 'Part III'. This ensures that where the term 'adverse criminal intelligence assessment' is used throughout the MTOFS Regulations, it has the same meaning as in section 54 of Part III to the ACC Act.

Item 83 Paragraph 6.08C(1)(da)

1062. This item omits 'person issuing the assessment' and substitutes 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.08C(1)(da). The amendment clarifies that, for the purpose of issuing an MSIC, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that an MSIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 84 Paragraph 6.08C(1)(da)

1063. This item replaces 'serious crime' with 'serious and organised crime' in paragraph 6.08C(1)(da), consistent with item 22A. This clarifies that one of the conditions for the issue of an MSIC is that the issuing body has been notified in writing by the Secretary that the Department has not been given an adverse criminal intelligence assessment indicating that the ACIC CEO reasonably believes that preventing the person proposed to be issued an MSIC from holding an MSIC is necessary or desirable to prevent the use of maritime transport or an offshore facility in connection with serious and organised crime.

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Item 85 Subregulation 6.08C(5)

1064. This item inserts a reference to paragraph 6.08C(1)(da) into paragraph 6.08C(5). The effect of this item is that it requires the issuing body to ensure that a person meets the criteria in paragraph 6.08C(1)(da), in addition to paragraphs 6.08C(5)(a) and (b), before an MSIC is issued under subregulation 6.08C(5).

1065. Under regulation 6.08C, an issuing body may only issue a MSIC to a person if the criterion listed in paragraphs 6.08C(1)(a) – (e) are satisfied. Subregulation 6.08C(5) sets out the requirements that must be met before a MSIC can be issued under subregulation 6.08C(5). Paragraph 6.08C(1)(da) has been added to ensure that an issuing body must not issue an ASIC if the issuing body has not been notified in writing by the Secretary that the Department has not been given an adverse criminal intelligence assessment.

Item 86 Paragraph 6.08D(1)(b)

1066. This item replaces 'person issuing the assessment' with 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.08D(1)(b). The amendment clarifies that, for the purpose of issuing a disqualifying notice, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that a MSIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 87 Paragraph 6.08D(1)(b)

1067. This item replaces 'serious crime' with 'serious and organised crime in paragraph 6.08D(1)(b), consistent with item 22A. Regulation 6.08D provides for the issue of a disqualifying notice. This amendment clarifies that regulation 6.08D applies if, as a result of a background check, the Department is given an adverse criminal intelligence assessment that indicates the ACIC CEO reasonably believes that preventing an applicant for a MSIC from holding a MSIC is necessary or desirable to prevent the use of maritime transport or an offshore facility in connection with serious and organised crime.

Item 88 Subregulation 6.08D(1) (note)

1068. This item amends the note to subregulation 6.08D(1) by replacing 'section 36D and Subdivision C of Division 2A of Part II' of the ACC Act, with 'section 54E and Division 4 of Part III'. This amendment aligns the MTOFS Regulations with new Part III to the ACC Act, as provisions related to a person's notification and review rights in relation to an adverse criminal intelligence assessment will be in section 54E and Division 4 of Part III when Part III is inserted.

Item 89 Subregulation 6.08D(3)

1069. This item replaces 'serious crime' with 'serious and organised crime in subsection 6.08D(1), consistent with item 22A. This clarifies that, if the Secretary thinks it is necessary to do so in the context of the issue of disqualifying notice, they may undertake any of the actions listed in paragraphs 6.08D(3)(a) and (b) to prevent unlawful interference with maritime transport or offshore facilities, or to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

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Item 90 Subregulation 6.08F(8)

1070. This item replaces 'serious crime' with 'serious and organised crime in subsection 6.08F(8), consistent with item 22A. Regulation 6.08F provides for MSIC applications to the Secretary if the person has an adverse criminal record. This amendment clarifies that the Secretary may undertake any of the actions listed in paragraphs 6.08F(8)(a) and (b) if he or she thinks it is necessary to do so to prevent unlawful interference with maritime transport or offshore facilities, or to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 91 Paragraph 6.08LC(1)(c)

1071. This item replaces 'serious crime' with 'serious and organised crime in subsection 6.08LC(1)(c), consistent with item 22A. Regulation 6.08LC provides for the application by the Secretary for a background check on an applicant for, or holder of, an MSIC. This clarifies that the Secretary may apply to the AGD Secretary for a background check on a person who is an applicant for, or the holder of, an MSIC, if the Secretary considers on reasonable grounds that there is a risk that the person would use maritime transport or an offshore facility in connection with serious and organised crime.

Item 92 Subparagraph 6.08LE(1)(b)(ii)

1072. This item replaces 'serious crime' with 'serious and organised crime' in subparagraph 6.08LE(1)(b)(ii), consistent with item 22A. Regulation 6.08LE provides for the suspension of MSICs at the Secretary's direction. This clarifies that one of the conditions for which the Secretary may, in writing, direct an issuing body to suspend a MSIC is if the Secretary reasonably considers that there is a risk that the holder of the MSIC who has been convicted of an maritime-security-relevant offence, but has not yet been sentenced, may use maritime transport or an offshore facility in connection with serious and organised crime.

Item 93 Paragraph 6.08M(1)(cb)

1073. This item omits 'person issuing the assessment' and substitutes 'Chief Executive Officer of the Australian Crime Commission' in paragraph 6.08M(1)(cb). The amendment clarifies that, for the purpose of requiring an issuing body to cancel a MSIC, the reasonable belief underpinning an adverse criminal assessment must be that of the ACIC CEO, rather than an unspecified individual. This ensures consistency with the legislative intent that a MSIC be refused where the ACIC CEO reasonably believes it is necessary or desirable to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 94 Paragraph 6.08M(1)(cb)

1074. This item replaces 'serious crime' with 'serious and organised crime' in paragraph 6.08M(1)(cb), consistent with item 22AA. This clarifies that an issuing body must immediately cancel a MSIC issued by the body if the Secretary has notified the issuing body in writing that the Department has been given an adverse criminal intelligence assessment that indicates the ACIC CEO reasonably believes that preventing the holder from holding a MSIC is necessary or desirable to prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

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Item 95 Subregulation 6.08O(3)

1075. This item replaces 'serious crime' with 'serious and organised crime' in subregulation 6.08O(3), consistent with item 21B. This clarifies that where an issuer cancels a MSIC for a reason mentioned in paragraph of subregulation 6.08M(1), the Secretary may use the notification powers in subregulation 6.08O(2) if he or she thinks that doing so may prevent the use of maritime transport or offshore facilities in connection with serious and organised crime.

Item 96 In the appropriate position in Schedule 2

1076. This item inserts Part 15—Amendments made by the Combatting Antisemitism, Hate and Extremism Act 2026 into the MTOFS Regulations

1077. This item describes the application of amendments made by this Bill. It clarifies the temporal scope of each amendment to ensure certainty for issuing bodies and holders of MSICs. It notes that the application of thresholds referenced in Part III of the ACC Act:

- amendments to regulation 6.08C (criteria for issuing MSICs) apply to MSICs issued on or after commencement,
- amendments to paragraph 6.08D(1)(b) (threshold for disqualifying notices based on adverse criminal intelligence assessments) apply to assessments given on or after commencement,
- amendments to subregulations 6.08D(3) and 6.08F(8) (Secretary's directions and notifications) apply to directions made on or after commencement,
- amendments to paragraph 6.08LC(1)(c) (background check applicants) apply to applications made on or after commencement,
- amendments to subparagraph 6.08LE(1)(b)(ii) (suspension directions) apply to directions made on or after commencement, and
- amendments to regulations 6.08M and 6.08O (cancellation and reporting of MSICs) apply to cancellations occurring on or after commencement, regardless of when the MSIC was issued.

1078. The new requirements, including the clarified threshold for the ACIC CEO's reasonable belief and the updated terminology referring to 'serious and organised crime' apply prospectively, without affecting decisions made under the previous framework.

Surveillance Devices Act 2004

Item 97 After paragraph 45(5)(g)

1079. This item amends subsection 45(5) by inserting additional exceptions to the restrictions on the use, recording, communication or publication of protected information. These amendments will permit the use, recording, communication or publication, or admission in evidence of protected information if it is necessary to do so for the performance of the

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ACC's function covered by new paragraph 7A(da) of the ACC Act and a proceeding relating to the review of an adverse criminal intelligence assessment.

1080. This item is intended to ensure the ACIC can use protected information obtained under a surveillance device warrant, computer access warrant, data disruption warrant, emergency authorisation or tracking device authorisation if it is necessary to do so for the purpose of its criminal intelligence assessment function, including as part of the proposed background checks for firearms licensing purposes. This also item is also intended to enable other agencies to communicate protected information to the ACIC if it is necessary to do so for the performance of the ACIC's criminal intelligence assessment function.

1081. Paragraph 45(5)(gb) will ensure protected information may be used, recorded, communicated or published, or may be admitted in evidence, if it is necessary to do so for a proceeding relating to the review of an adverse criminal intelligence assessment, noting applicants would retain the right to seek judicial review of adverse assessments and background checks. Subject to the laws of the relevant jurisdiction, an applicant would also retain the right to seek merits review of final decisions on firearms licence applications made by a State or Territory firearms licensing authority.

1082. Section 44 defines 'protected information' for the purposes of the SD Act by listing broadly different types of protected information at paragraphs (a) – (d). Section 45 provides for two offences with respect to the unlawful use, recording, communication, publication or admission in evidence of protected information.

Item 98 After subsection 45(7)

1083. This item inserts new subsection 45(7A) after subsection 45(7). This amendment provides that subsection 45(7) does not apply in relation to the ACC in connection with the performance of its function covered by new paragraph 7A(da) of the ACC Act. This item will permit the ACC to communicate information that would otherwise be restricted by subsection 45(7) in connection with the performance of this function. For example, this would include proceedings relating to the making or giving of a criminal intelligence assessment.

1084. This amendment enables the ACIC to communicate information obtained through the use of a surveillance device by another law enforcement officer of a particular law enforcement agency for the purpose of performing its criminal assessment function, despite the fact the information may have been originally communicated for a different purpose.

1085. Subsection 45(7) provides that protected information obtained through the use of a surveillance device by a law enforcement officer of a particular law enforcement agency that is communicated to another law enforcement agency, or an agency that is not a law enforcement agency, may not, except for the purpose of bringing a relevant proceeding, be communicated to any person who is not a member of that second agency.

Item 99 After paragraph 45B(5)(b)

1086. This item amends subsection 45B(5) by inserting an additional exception to the restrictions on the use, recording, communication or publication of protected network

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activity warrant information in relation to the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act.

1087. This amendment enables the ACIC to use protected network activity warrant information for its criminal intelligence assessment function.

1088. Section 44A defines 'protected network activity warrant information' for the purposes of the SD Act by listing broadly different types of protected network activity warrant information at paragraphs (a) – (e). Subsection 45B(10) provides that network activity warrant information may be admitted in evidence in certain circumstances. Paragraph 45(10)(b) provides that protected network activity warrant information may be admitted in evidence in a proceeding that is not a criminal proceeding.

Telecommunications (Interception and Access) Act 1979

Item 100 Subsection 5(1) (before subparagraph (aa)(i) of the definition of *permitted purpose*)

1089. This item extends the definition of permitted purpose in section 5 to include, in the case of the ACC, the performance of its function covered by new paragraph 7A(da) of the ACC Act.

1090. Interception agencies may only deal with intercepted information or interception warrant information for a permitted purpose. For example, where permitted by section 67. Similarly, a criminal law-enforcement agency may only communicate or use lawfully accessed information (from a stored communication) and stored communications warrant information for a permitted purpose, such as where permitted by section 139.

1091. This amendment would have the effect of enabling lawfully intercepted information and interception warrant information to be communicated, used, or recorded for the performance of the ACIC's criminal intelligence assessment function.

1092. This amendment would also affect section 79 of the TIA Act by requiring the chief officer of an agency to be satisfied that the restricted record is not likely to be required for a permitted purpose in relation to the agency before causing the restricted record to be destroyed.

1093. Section 5 defines a restricted record as a record other than a copy, that was obtained by means of an interception, whether or not in contravention of subsection 7(1), of a communication passing over a telecommunications system, but does not include a record of general computer access intercept information, a record of data disruption intercept information or a record of network activity warrant intercept information.

Item 101 After paragraph 5B(1)(a)

1094. This item amends the definition of 'exempt proceeding' in subsection 5B(1) to allow agencies to give lawfully obtained information in evidence in a proceeding by way of review of a decision of ASIO to make an adverse security assessment or a qualified security assessment, or a decision of the ACC to make an adverse criminal intelligence assessment.

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1095. Subsection 63(1) prohibits a person from giving in evidence in a proceeding lawfully intercepted information. Subsection 74(1) relevantly provides that a person may give lawfully intercepted information 'in evidence in an exempt proceeding'. Similarly, section 143 provides that a person may give lawfully accessed information and stored communications warrant information in evidence in an exempt proceeding.

1096. This amendment would have the effect of enabling lawfully obtained information to be given in evidence in a proceeding by way of review of a decision of ASIO to make an adverse security assessment or a qualified security assessment, or a decision of the ACC to make an adverse criminal intelligence assessment in line with sections 74 and 143.

Item 102 After subsection 67(1C)

1097. This item inserts new subsections 67(1D) and (1E) after subsection 67(1C).

1098. New subsection 67(1D) enables an officer of the ACC to communicate to another person, make use of, or make a record of interception warrant information in relation to a warrant issued to another agency for the purpose of the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act.

1099. This amendment clarifies that the restriction in paragraph 67(1A)(c), restricting the communication, use and recording of interception warrant information in relation to a warrant issued to another unless the information was communicated under section 68, would not apply to the ACIC for the purpose of its criminal intelligence assessment function.

1100. New subsection 67(1E) provides that new subsection 67(1D) does not apply if the information was obtained by an officer of the ACC by, or in connection with, intercepting a communication when exercising authority under a warrant issued to another agency, or as a result of a communication in accordance with section 66, where the information was obtained by intercepting a communication under a warrant issued to another agency.

1101. Subsection 67(1E) clarifies that where the ACIC has obtained interception warrant information as a result of intercepting on behalf of, or providing technical assistance to another agency, it would not be able to communicate, use or make a record of that interception warrant information for the purpose of the ACIC's criminal intelligence assessment function. Subsection 67(1E) is not intended to limit the communication of information to the ACIC under section 68 of the TIA Act.

1102. Section 66 of the TIA Act allows an interceptor of a communication to disclose the information to the agency that has been issued the warrant and facilitates an agency conducting interception on behalf of another agency passing the information to the investigative officer within the agency which obtained the warrant.

1103. Section 67(1) relates to how intercepted information can be used by agencies. Subsections 67(1A) to (1B) ensure that agencies intercepting on behalf of, or providing technical assistance to another agency, cannot use the information obtained for their own purposes.

Item 103 After paragraph 68(a)

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1104. Section 68 provides for the communication of lawfully obtained information by the agency that originally obtained the information to other agencies (referred to as the 'originating agency'). This item inserts new subsection 68(aa) after subsection 68(a) to enable the communication of such information to the Chief Executive Officer of the ACC, if the information relates, or appears to relate, to the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act.

1105. This amendment would enable other agencies to communicate lawfully obtained information to the ACIC if the information relates, or appears to relate, to the performance of the ACC's criminal intelligence assessment function.

Item 104 Subsection 73(1)

1106. This item is consequential to item 25C which inserts new subsection 73(1A).

Item 105 After subsection 73(1)

1107. This item inserts new subsection 73(1A) after subsection 73(1). This amendment provides that subsection 73(1) does not apply in relation to the ACC in connection with the performance of its function covered by new paragraph 7A(da) of the ACC Act. This item enables the ACC to communicate, make use of, or make a record of, information communicated in accordance with section 63A, subsection 63B(2), 63C(2) or 63D(2), section 64A or 67, subsection 71(3) or subsection 73(1) in connection with the performance of this function.

1108. This amendment will enable the ACIC to communicate, use or record lawfully intercepted information and interception warrant information for the purpose of performing its criminal assessment function, despite the fact the information may have been originally communicated to the ACIC for a different purpose.

1109. Subsection 73(1) provides that a person to who information has been communicated in accordance with section 63A, subsection 63B(2), 63C(2) or 63D(2), section 64A or 67, subsection 71(3) or subsection 73(1) for a purpose may communicate to another person, make use of, or make a record of, that information for that purpose, and for no other purpose.

Item 106 At the end of subsection 139(2)

1110. This item amends subsection 139(2) to include an additional exception to the prohibition on dealing with accessed information for purposes connected with the performance of the ACC's function covered by new paragraph 7A(da) of the ACC Act.

1111. This amendment would have the effect of enabling lawfully accessed information (other than foreign intelligence information), preservation notice information and stored communications warrant information to be communicated, used, or recorded for the performance of the ACIC's criminal intelligence assessment function.

1112. Section 133 prohibits communicating, making use of, making a record of or giving as evidence, lawfully accessed information, information obtained by accessing a stored communication in contravention of section 108 or stored communications warrant

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information. Division 2 of Part 3-4 provides exceptions to the prohibition on dealing with accessed information.

Item 107 Section 142

1113. This item is a technical amendment related to item 26AB which inserts new subsection 142(2).

Item 108 At the end of section 142

1114. This item inserts new subsection 142(2) at the end of section 142. This amendment provides that new subsection 142(1) does not apply in relation to the ACC in connection with the performance of its function covered by new paragraph 7A(da) of the ACC Act. This item enables the ACC to communicate, make use of, or make a record of, information communicated in accordance with subsection 135(4), section 139, 139AA, 139A or 139B, subsection 140(2) or new subsection 142(1) in connection with the performance of this function.

1115. This amendment will enable the ACIC to communicate, use or record lawfully access information (other than foreign intelligence information), preservation notice information and stored communications warrant information for the purpose of performing its criminal assessment function, despite the fact the information may have been originally communicated to the ACIC for a different purpose.

1116. Section 142 provides that a person to who information has been communicated under subsection 135(4), section 139, 139AA, 139A or 139B, subsection 140(2) or section 142 for a purpose, may communicate to another person, make use of, or make a record of, that information for that purpose, and for no other purpose.

1117. Section 5 defines an officer in the case of the ACC as the Chief Executive Officer of the ACC, an examiner or a member of the staff of the ACC. A member of the staff the ACC has the same meaning as in the ACC Act.

Item 109 Section 178 (at the end of the heading)

1118. This item is related to item 27 which enables an authorised officer of the ACC to make an authorisation under section 178 for the performance of the ACC's functions covered by new paragraph 7A(da) of the ACC Act, in addition to the enforcement of the criminal law.

Item 110 Subsection 178(3)

1119. This item replaces subsection 178(3) to enable an authorised officer of the ACC to make an authorisation under section 178 if satisfied that the disclosure is reasonably necessary for the performance of the ACC's functions covered by new paragraph 7A(da) of the ACC Act, in addition to the enforcement of the criminal law.

1120. This amendment would enable the ACIC to authorise the disclosure of telecommunications data for the performance of its criminal intelligence assessment function. This would enable the ACIC to obtain information to assist to identify persons,

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and to determine whether persons have been in contact with one another, to resolve foundational intelligence questions when conducting a criminal intelligence assessment.

1121. Section 178 permits disclosure of existing telecommunications data where the disclosure is authorised by an authorised officer of an enforcement agency for the enforcement of the criminal law. Subsection 178(3) states that an authorised officer of an enforcement agency must not authorise the disclosure of telecommunications data unless he or she is satisfied that the disclosure is reasonably necessary for the enforcement of the criminal law.

Item 111 Subsection 180(4)

1122. This item is consequential to item 27C which inserts new paragraph 180(4)(c).

Item 112 Subsection 180(4)(a)

1123. This item is consequential to item 27C which inserts new paragraph 180(4)(c).

Item 113 Subsection 180(4)(b)

1124. This item is consequential to item 27C which inserts new paragraph 180(4)(c).

Item 114 At the end of subsection 180(4)

1125. This item inserts new paragraph 180(4)(c) at the end of subsection 180(4) to enable an authorised officer of the ACC to make an authorisation under subsection 180(2) if satisfied that the disclosure is reasonably necessary for the performance of the ACC's functions covered by new paragraph 7A(da) of the ACC Act.

1126. This amendment would enable the ACIC to authorise the disclosure of telecommunications data for the performance of its criminal intelligence assessment function. This would enable the ACIC to obtain information to assist to identify persons, and to determine whether persons have been in contact with one another, to resolve foundational intelligence questions when conducting a criminal intelligence assessment.

1127. Section 180 deals with the disclosure of prospective information to a criminal law enforcement agency. Subsections 180(1) and 180(2) provide that a carrier or carriage service provider may disclose telecommunications data that comes into existence during the period that an authorisation is in force if the disclosure is authorised by an authorised officer of a criminal law-enforcement agency.

Item 115 After subparagraph 181A(3)(b)(ii)

1128. This item amends paragraph 181A(3)(b) by inserting an additional exemption to the offences in subsections 181A(1) and (2) to enable the disclosure of information or a document relating to authorisations under Division 3 of Part 4-1, where it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

1129. Subsection 181A provides for offences related to the use or disclosure of information that relates to authorisations made under Division 3 of Part 4-1, which are authorisations made by ASIO for the disclosure of information or documents in connection with the

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performance of its functions. Subsection 181A(3) provides exemptions for offences in relation to the disclosure of information.

1130. Information relating to authorisations made under Division 3 of Part 4-1 may have been disclosed to the ACIC for an existing purpose in paragraph 181A(3)(b), such as to enforce the criminal law. This amendment would enable the ACIC to disclose this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 116 After subparagraph 181A(6)(b)(ii)

1131. This item amends paragraph 181A(6)(b) by inserting an additional exemption to the offences in subsections 181A(4) and (5) to enable the use of information or a document relating to authorisations under Division 3 of Part 4-1, where it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

1132. Subsection 181A(6) provides for exemptions to offences in subsection 181A(4) and 181A(5) in relation to the use of information or documents relating to authorisations made under Division 3 of Chapter 4.

1133. Information relating to authorisations made under Division 3 of Part 4-1 may have been disclosed to the ACIC for an existing purpose in paragraph 181A(3)(b), such as to enforce the criminal law. This amendment would enable the ACIC to use this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 117 After subparagraph 181B(3)(b)(iib)

1134. This item amends paragraph 181B(3)(b) by inserting an additional exemption to the offences in paragraphs 181B(1)(a) and (2)(a) to enable the disclosure of information or a document relating to authorisations under Division 4 Part 4-1, where it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

1135. Subsection 181B provides for offences related to the use or disclosure of information that relates to authorisations made under Division 4 of Part 4-1, which are authorisations made by enforcement agencies for the disclosure of information or documents in connection with the performance of their functions. Subsection 181B(3) provides exemptions for offences in relation to the disclosure of information.

1136. Information relating to authorisations made under Division 4 of Part 4-1 may have been disclosed to the ACIC for an existing purpose in paragraph 181B(3)(b), such as to enforce the criminal law. This amendment would enable the ACIC to disclose this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 118 After subparagraph 181B(6)(b)(iab)

1137. This item amends paragraph 181B(6)(b) by inserting an additional exemption to the offences in paragraphs 181B(4)(a) and (5)(a) to enable the use of information or a document relating to authorisations under Division 4 of Part 1-4, where it is reasonably

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necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

1138. Subsection 181B(6) provides for exemptions to offences in subsection 181B(4)(a) and 181B(5)(a) in relation to the use of information or documents relating to authorisations made under Division 4 of Part 4-1.

1139. Information relating to authorisations made under Division 4 of Part 4-1 may have been disclosed to the ACIC for an existing purpose in paragraph 181B(3)(b), such as to enforce the criminal law. This amendment would enable the ACIC to use this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 119 After subparagraph 182(2)(a)(iiib)

1140. This item amends paragraph 182(2)(a) by inserting an additional exemption to the offence in paragraph 182(1) to permit secondary disclosures of non-missing person information if the disclosure is reasonably necessary for the performance by the ACC of its function covered by paragraph 7A(da) of the ACC Act.

1141. Section 182 provides for an offence where a person discloses or uses telecommunications data received by reason of a lawful disclosure to an enforcement agency under Division 4 of Part 4-1.

1142. The ACIC may hold information and documents disclosed under a Division 4 authorisation. This amendment would enable the ACIC to disclose this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 120 After subparagraph 182(3)(a)(iib)

1143. This item amends paragraph 182(3)(a) by inserting an additional exemption to the offence in paragraph 182(1) to permit the use of non-missing person information if the use is reasonably necessary for the performance by the ACC of its function covered by paragraph 7A(da) of the ACC Act.

1144. The ACIC may hold information and documents disclosed under a Division 4 authorisation. This amendment would enable the ACIC to use this information if it is reasonably necessary for the purpose of its criminal intelligence assessment function.

Item 121 After subparagraph 182B(b)(ivb)

1145. This item amends paragraph 182B(b) by inserting an additional exemption to the offences in section 182A to permit the use and disclosure of information if it is reasonably necessary to enable the ACC to perform its function covered by paragraph 7A(da) of the ACC Act.

1146. The use of information about a journalist information warrant for the purpose of the ACIC making or giving a criminal intelligence assessment would be extremely rare. Only one journalist information warrant was issued to any agency in the reporting period between 1 July 2019 and 30 June 2024. The ACIC has never been issued a journalist information warrant. However, in circumstances where the ACIC held information

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indicating that the grant of a firearms licence to a person would give rise to risk relating to serious and organised crime, it would be important for this information be able to be used where reasonably necessary to enable the ACIC to perform its criminal intelligence assessment function. This would ensure that criminal intelligence holdings can be used to inform decision making on firearms licencing by FLAs and prevent the use of aviation, or maritime transport or an offshore facility, in connection with serious and organised crime.

1147. Section 182A provides for offences where a person discloses or uses a journalist information warrant or information about such a warrant. Section 182B outlines the circumstances in which disclosures and use are permitted. An enforcement agency may use or disclose such information to a third party for the specified purposes set out in the section.

Part 3—Transmission of firearms information and other information to ACIC

1148. Part 3 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, establishes a new information sharing and disclosure framework to facilitate the automatic disclosure of firearms information and other prescribed information, collected by the Department of Home Affairs and ABF, to the Australian Criminal Intelligence Commission (ACIC) which administers the National Firearms Register (NFR) and the National Criminal Intelligence System (NCIS). The NFR will be an integrated system that connects and draws information from existing Commonwealth, state and territory firearms registries, portals and management systems into one central register. The NFR will provide a life cycle view of registered firearms in Australia, delivering timely and accurate information on firearms, firearm owners and licences across all jurisdictions. The NFR will enhance police and community safety and improve law enforcement capability. The sharing of this firearms information is a vital component of the NFR, including information on the entry or 'birth' of a firearm in Australia. This supports effective and necessary information sharing between federal and state law enforcement agencies, including to track a firearm from import to the end user and ultimately destruction or export.

Customs Act 1901

Item 122 Section 273L

1149. This item repeals section 273L of the Customs Act and substitutes that provision with two new sections, being new sections 273L and 273M.

1150. These new sections operate to authorise the disclosure and electronic transmission of firearms and other information (including personal information) by the Home Affairs Secretary and the Comptroller-General of Customs to the Australian Criminal Intelligence Commission (ACIC).

1151. New subsection 273L(1) confers a power on the Home Affairs Secretary and provides that the Home Affairs Secretary may by discretion disclose firearms information, or other information prescribed by the regulations for the purposes of new subsection 273L(1), that is contained in one or more electronic systems under the control of the Home Affairs Secretary, to the ACIC CEO. The term 'electronic systems' relies on its plain English definition.

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1152. The note under new subsection 273L(1) outlines that the new section 273L constitutes an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 of the *Privacy Act 1988* (Privacy Act).

1153. Without limiting new subsection 273L(1), new subsection 273L(2) provides that the Home Affairs Secretary may by discretion disclose information mentioned in new subsection 273L(1) by arranging for the automatic transmission of that information to one or more electronic systems under the control of the ACIC CEO.

1154. New subsection 273L(3) confers a new power on the Comptroller-General of Customs and provides that the Comptroller-General of Customs may by discretion disclose firearms information, or other information prescribed by the regulations for the purposes of new subsection 273L(3), that is contained in one or more electronic systems under the control of the Comptroller-General of Customs, to the ACIC CEO. The term electronic systems rely on its plain English definition.

1155. Note 1 under new subsection 273L(3) draws the reader's attention to the definition of Comptroller-General of Customs, which is defined in subsection 4(1) of the Customs Act.

1156. Note 2 under new subsection 273L(3) outlines that the new section 273L constitutes an authorisation for the purposes of other laws, such as Australian Privacy Principle 6 of the Privacy Act.

1157. Without limiting new subsection 273L(3), new subsection 273L(4) provides that the Comptroller-General of Customs may at their discretion disclose firearms information, or other information prescribed by the regulations, by arranging for the automatic transmission of that information to one or more electronic systems under the control of the ACIC CEO, such as the NFR or NCIS.

1158. For new section 273L, new subsection 273L(5) provides that "firearms information" is information relating to firearms, or other goods relating to relating to firearms (including firearms frames, firearms receivers and firearms sound suppressors). This information may include information relating to the import and export of firearms, information relating to firearms licences or permits, or personal and other information that may be relevant in relation to a person seeking to import or export a firearm or firearm related good.

1159. For new section 273L, new subsection 273L(6) provides that information prescribed for the purposes of new subsection 273L(1) or 273L(3) in the regulations must be information relating to goods that are not firearms or other goods relating to firearms. This information may include information relating to the import and export of the goods, information relating to licences or permits, or personal and other information that may be relevant in relation to a person seeking to import or export the goods.

1160. For new section 273L, new subsection 273L(7) sets out the meaning of four terms that are referenced throughout the section. The ***ACIC*** refers to the Australian Criminal Intelligence Commission, which is established by the *Australian Crime Commission Act 2002*, and is the agency which will receive information. The ***ACIC CEO*** is the Chief Executive Officer of the ACIC, the statutory head of the agency who will receive the information. The ***Home Affairs Secretary*** means the Secretary of the Department administering the ABF Act, which ensures the term continues to refer to the statutory

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head of the Department responsible for the ABF (and therefore the systems which will store relevant information provided for in this item). Finally, ***personal information*** is provided as having the same meaning as in the *Privacy Act 1988* – this ensures consistent application of this definition across Commonwealth legislation.

1161. New section 273M relates to the entry and transmission of information by computer. The section provides that, if the Customs Act requires or permits information to be entered into or transmitted by a computer, the information may be entered into or transmitted by the computer in an encoded form chosen by either the Comptroller General of Customs, or the Home Affairs Secretary (depending on whether it is in relation to new subsection 273L(2)).

1162. New section 273M substantially replicates section 273L that is in force prior to the amendments made by this item but expands it to cover information that would be disclosed by the Home Affairs Secretary.

1163. The Department of Home Affairs currently collects information on the import and export of goods under the Customs Act. Certain information, being firearms information and other prescribed information, is required to be disclosed to other Commonwealth and state and territory agencies. This is intended to occur through the National Firearms Register, which will also enable the end-to-end tracking of firearms, frames, receivers and suppressors and related information for the purpose of public safety.

1164. Information required includes ***Immigration and Border Protection information***, as defined in subsection 4(1) of the ABF Act. This information can also include personal information as defined in the subsection 6(1) of the Privacy Act.

1165. The purpose of the amendments made by this item is to provide a legal mechanism to share firearms information and associated entity information (such as a person's address, permits and licence information), which are for public safety and law enforcement purposes.

1166. The inclusion of personal information having the same meaning as in the Privacy Act results in the information that is collected, if it is considered personal information, being protected through the safeguards established within the Privacy Act. The inclusion of personal information within this information scheme specifically addresses the Australian Privacy Principle (APP) 6. This is further clarified by the note under new subsection 273L(1) outlining that 273L constitutes an authorisation for the purposes of other laws, such as APP6 of the Privacy Act.

1167. APP 6.1 states that if an APP entity holds personal information about an individual that was collected for a particular purpose (the ***primary purpose***), the entity must not use or disclose the information for another purpose (the ***secondary purpose***) unless the individual has consented to the use or disclosure of the information; or subclause 6.2 or 6.3 applies in relation to the use or disclosure of the information. Paragraph 6.2(b) allows for the use of disclosure of the information if it is required or authorised by or under an Australian law or court/tribunal order.

1168. For the reasons stated above, the inclusion of personal information within firearms information or other prescribed information are integral to the functioning of the NFR and bolsters the accuracy and efficacy of the system.

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1169. With regards to the automatic transfer of information component being authorised within the legislation, this allows for systems to transfer the firearms information and other prescribed information as defined within the legislation. This allows for consistent and systematic transfer of information which increases the accuracy and efficacy of the information.

Item 123 Application provision

1170. This item establishes an application provision in respect of new section 273L, as inserted by Part 3 of Schedule 3 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, and has the effect that new section 273L applies in relation to information disclosed on or after the commencement of item 2, whether the information was obtained or generated before, on or after that commencement.

Part 4—Public safety tests for firearms and weapons

1171. Part 4 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, introduces a new public safety test for firearms, and a new public safety test for weapons, under the Prohibited Imports Regulations that may be assessed against the importation of firearms and weapons.

1172. The public safety test, if applied by the Minister, requires assessment of whether the importation of the firearms or weapon may pose a risk to the health, safety or security of the public or a sector of the public. The elements for consideration for the test are to be outlined within a legislative instrument made by the Minister.

1173. The current Prohibited Imports Regulations do not provide a clear basis for refusing a firearms or weapons import where the item poses an unacceptable risk to public safety. The public safety test is consistent with the National Firearms Agreement, which states that possession and use of a firearm is a privilege that is conditional on the overriding need to protect public safety.

Division 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item 124 Subregulation 2(1)

1174. This item amends subregulation 2(1) of the Prohibited Imports Regulations to insert new definitions for “fails the public safety test for firearms”, “fails the public safety test for weapons”, “passes the public safety test for firearms”, “passes the public safety test for weapons”, “public safety test for firearms” and “public safety test for weapons”.

1175. The insertion of these terms is required to signpost the meaning given to these terms by new subregulations 4FA(5) and 4FA(4). This ensures that these terms will apply throughout this Part.

1176. This amendment enables the terms to have the meaning as defined regardless of where the terms are referred to in the Prohibited Imports Regulations. To this effect, this amendment complements the amendments made by items 2 to 6, which give meaning to the new terms.

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Item 125 At the end of subregulation 4F(1)

1177. This item inserts new paragraph 4F(1)(c) at the end of subregulation 4F(1) of the Prohibited Imports Regulations.

1178. Subregulation 4F(1) prohibits the importation of a firearm, a firearm accessory, a firearm part, a firearm magazine, ammunition, a component of ammunition or an imitation firearm, unless:

- the firearm, firearm accessory, firearm part, firearm magazine, ammunition, a component of ammunition or an imitation firearm is an article to which an item in Part 2 of Schedule 6 to the Prohibited Imports Regulations applies; and

- the importation is in accordance with the requirements set out in column 3 of the item.

1179. New paragraph 4F(1)(c) sets out a requirement in respect of the public safety test for firearms, and has the effect that, in addition to the existing requirements under paragraphs 4F(1)(a) and (b), if the public safety test for firearms is applied under regulation 4FA to the importation of an, then the importation of the article must pass the public safety test for firearms, as inserted by item 4.

1180. This amendment is necessary to enable articles to be exempt from the prohibition of imports under subregulation 4F(1) where the other requirements under that provision are satisfied, and where the public safety test applies, and the articles pass that test.

Item 126 After subregulation 4F(1)

1181. This item inserts new subregulation 4F(1AA) into the Prohibited Imports Regulations to complement the amendments made by item 2.

1182. The amendments made by item 2 ensure that, in addition to the requirements under paragraphs 4F(1)(a) and (b), if the public safety test for firearms is applied under regulation 4FA to the importation of an article, then the importation of the article must pass the public safety test for firearms, as inserted by item 4.

1183. Where the public safety test for firearms applies to the importation of an article and the importation fails that test, the importation of the article would be prohibited under regulation 4F of the Prohibited Imports Regulations. New subregulation 4F(1AA) provides an exemption to the prohibition if the importation of the article complies with the public interest test set out in item 8A, or the national interest test set out in item 8B, of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

1184. This item clarifies that the public interest test and national interest test, which may be applied by the Minister to the importation of an article, may override a decision made under the new public safety test for firearms. That is, where an article has failed the public safety test, it may still pass the public interest test or national interest test, and be approved for importation.

Item 127 After regulation 4F

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1185. The Australian firearms framework involves permission and certification from both the Commonwealth, and by state and territory police prior to importation. Currently, if a proposed firearm or firearm-related article import application meets the legislative requirements and domestic criteria (e.g., state and territory licencing requirements), there is no clear legislative basis for refusing the application to import that firearm or article. This poses a significant risk to the community as certain firearms, while meeting specific tests for import, may not be appropriate for their intended use in the community. There are limited circumstances where the Minister may consider that while an article may meet all current legislative requirements, there are broader concerns around the importation of that article.

1186. The intent of this item is to provide the Minister with the authority to further consider whether an importation poses a significant risk to the health, safety or security of the public or a segment of the public. This ensures that, while certain firearms meet specific tests for import, there is an ability to refuse import permission where they may not be suitable for the intended use within the community.

1187. This item inserts new regulation 4FA into the Prohibited Imports Regulations to establish a public safety test for firearms which would apply to the importation of goods to which regulation 4F applies. Under this item, the test could be applied to assess an application for permission to import an article, or to consider any documentary evidence for compliance with a test where there is no application (see new subregulation 4FA(1)).

1188. New subregulation 4FA(1) provides that at or before the importation of an article to which regulation 4F applies, the Minister may assess whether the importation of the article poses a risk to the health, safety or security of the public or a segment of the public. This is the public safety test.

1189. This subregulation allows for the new public safety test for firearms to be applied by the Minister, or their delegate, to the importation of an article either at or before importation. In practice, ‘at or before importation’ allows for flexibility where import permission is required and has not been sought prior to an article arriving for importation.

1190. The note under new subregulation 4FA(1) draws the reader’s attention to the prohibition under regulation 4F which applies to the importation of firearms, firearm accessories, firearm parts, firearm magazines, ammunition, components of ammunition and imitation firearms. This clarifies for the reader which articles the new public safety test for firearms may be applied to.

1191. New subregulation 4FA(2) operates, for the avoidance of doubt, to clarify that the Minister does not have any obligation to consider whether to assess the importation of an article under new subregulation 4FA(1). This ensures application of the test is discretionary, and does not require the test to be applied to every applicable article being imported.

1192. For the assessment of the Minister under new subregulation 4FA(1), new subregulation 4FA(3) provides that the Minister may, at any time, require the person importing the article to give to the Minister any information that the Minister reasonably requires for the purpose of assessing the importation of the article.

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1193. This ensures that, if the original application made under an existing test provides information that may require the public safety test to be applied but it does not provide information to satisfy the public safety test, the Minister may request further information. Subregulation 4FA(3) therefore supports both the Minister's application of the test to the importation of the article, and provides the applicant with further opportunities to provide information which may support the importation of the article passing the test.

1194. New subregulation 4FA(4) provides that the importation of an article passes the public safety test for firearms where the Minister assesses the importation of the article under new subregulation 4FA(1) and determines, in accordance with the legislative instrument made under new subregulation 4FA(6), that the importation of the article does not pose a risk to the health, safety or security of the public or a segment of the public.

1195. New subregulation 4FA(5) provides that the importation of an article fails the public safety test for firearms where the Minister assesses the importation of the article under new subregulation 4FA(1) and determines, in accordance with the legislative instrument made under new subregulation 4FA(6) that the importation of the article poses a risk to the health, safety or security of the public or a segment of the public.

1196. The note under new subregulation 4FA(5) draws the reader's attention to the general status of articles the importation of which fails the public safety test and provides that if the importation of an article fails the public safety test for firearms, the article is generally prohibited from being imported (see regulations 4F(1) and (1AA)).

1197. New subregulation 4FA(6) establishes an instrument-making power and provides that, for the purposes of new regulation 4FA, the Minister must, by legislative instrument, make rules for and in relation to whether the importation of an article to which regulation 4F applies poses a risk to the health, safety or security of the public or a segment of the public.

1198. To avoid doubt in respect of new regulation 4FA, new subregulation 4FA(7) has the effect that a reference in this section to the public or a segment of the public includes a reference to emergency services personnel who serve the public.

Item 128 Subregulation 4H(1)

1199. This item repeals subregulation 4H(1) of the Prohibited Imports Regulations and substitutes it with two new provisions, being new subregulations 4H(1) and (1A).

1200. Subregulation 4H(1), as in force prior to the amendments made by this item, provides that the importation into Australia of a weapon or weapon part of the kind mentioned in an item in Part 2 of Schedule 13 to the Prohibited Imports Regulations is prohibited unless the importation is in accordance with the requirements set out in the item.

1201. New subregulation 4H(1) has the effect that, in addition to the requirements under new paragraph 4H(1)(a), if the public safety test for weapons is applied under new regulation 4HA to the importation of a weapon or weapon part of a kind, then the importation of the goods must pass the public safety test for weapons, as inserted by item 6.

1202. The additional requirement is necessary to enable goods, to which the public safety test for weapons applies, and where the importation of the goods passes that test, to be exempt

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from the prohibition of import under subregulation 4H(1) to the extent that the other requirements under that provision are also satisfied.

1203. New subregulation 4H(1A) provides that, despite new subregulation 4H(1), the importation of goods that fails the public safety test for weapons is not prohibited if the importation of the goods complies with the public interest test set out in item 9, or the national interest test set out in item 10, of Part 1 of Schedule 13 to the Prohibited Imports Regulations.

1204. Where the public safety test for weapons applies to the importation of goods per new subregulation 4H(1) and the importation fails that test, the importation of the goods would be prohibited under regulations 4H of the Prohibited Imports Regulations. New subregulation 4H(1A) provides an exemption to the prohibition in the circumstance mentioned if the importation of the goods complies with the public interest test set out in item 9, or the national interest test set out in item 10, of Part 1 of Schedule 13 to the Prohibited Imports Regulations.

1205. This item clarifies that the public interest test and national interest test, which may be applied by the Minister to the importation of a good, may override a decision made under the new public safety test for weapons. That is, where the good has failed the public safety test, it may still pass the public interest test or national interest test, and be approved for importation.

Item 129 After regulation 4H

1206. This item inserts new regulation 4HA into the Prohibited Imports Regulations to establish a public safety test for weapons which would apply to the importation of goods to which regulation 4H applies. Under this item, the test could be applied to assess an application for permission to import goods, or to consider any documentary evidence for compliance with a test where there is no application (see new subregulation 4HA(1)).

1207. New subregulation 4HA(1) provides that at or before the importation of goods to which regulation 4H applies, the Minister may assess whether the importation of the goods poses a risk to the health, safety or security of the public or a segment of the public.

1208. This subregulation allows for the new public safety test for weapons to be applied by the Minister, or their delegate, to the importation of a weapon or weapon related good either at or before importation. In practice, ‘at or before importation’ allows for flexibility where import permission is required and has not been sought prior to the good arriving for importation.

1209. The note under new subregulation 4HA(1) draws the reader’s attention to the prohibition under regulation 4H which applies to the importation of weapons and weapon parts. This clarifies for the reader which goods the new public safety test for weapons may be applied to.

1210. New subregulation 4HA(2) operates, for the avoidance of doubt, to clarify that the Minister does not have any obligation to consider whether to assess the importation of goods under new subregulation 4HA(1). This ensures application of the test is discretionary, and does not require the test to be applied to every applicable good being imported.

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1211. For the assessment of the Minister under new subregulation 4HA(1), new subregulation 4HA(3) provides that the Minister may, at any time, require the person importing the article to give to the Minister any information that the Minister reasonably required for the purpose of assessing the importation of the article.

1212. This ensures that, if the original application made under an existing test provides information that may require the public safety test to be applied but it does not provide information to satisfy the public safety test, the Minister may request further information. Subregulation 4HA(3) therefore supports both the Minister's application of the test to the importation of the good, and provides the applicant with further opportunities to provide information which may support the importation of the article passing the test.

1213. New subregulation 4HA(4) provides that the importation of goods passes the public safety test for weapons when the Minister assesses the importation of the goods under new subregulation 4HA(1) and determines, in accordance with the legislative instrument made under new subregulation 4HA(6), that the importation of the goods does not pose a risk to the health, safety or security of the public or a segment of the public.

1214. New subregulation 4HA(5) provides that the importation of goods fails the public safety test for weapons when the Minister assesses the importation of the goods under new subregulation 4HA(1) and determines, in accordance with the legislative instrument made under new subregulation 4HA(6) that the importation of the goods poses a risk to the health, safety or security of the public or a segment of the public.

1215. The note under subregulation 4HA(5) draws the reader's attention to the general status of goods the importation of which fails the public safety test and provides that if the importation of goods fails the public safety test for weapons, the goods are generally prohibited from being imported (see regulations 4H(1) and (1A)).

1216. New subregulation 4HA(6) establishes an instrument-making power and provides that, for the purposes of new regulation 4HA, the Minister must, by legislative instrument, makes rules for and in relation to whether the importation of goods to which regulation 4H applies poses a risk to the health, safety or security of the public or a segment of the public.

1217. To avoid doubt in respect of new regulation 4HA, new subregulation 4HA(7) has the effect that a reference in this section to the public or a segment of the public includes a reference to emergency services personnel who serve the public.

1218. The intent of the amendments in this item is the same as that in item 4, to provide the Minister with the authority to further consider whether an importation poses a significant risk to the community, recognising that while certain weapons may pass other import tests, they may not be suitable for their intended use within the community.

Item 130 Part 1 of Schedule 6

1219. This item amends Part 1 of Schedule 6 to the Prohibited Imports Regulations to insert a note after "A reference in column 3 of Part 2 of this Schedule to compliance with a test means compliance in the following manner:".

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1220. The note provides additional clarification to the reader by stating that public safety test for firearms may be applied to an article in addition to the tests in Part 1 of Schedule 6 to the Prohibited Imports Regulations, and that if the importation of the article fails the public safety test, for firearms, the importation of the article will be prohibited unless the Minister gives written permission for the importation of the article under the public interest test or the national interest test (see subregulation 4F(1AA)).

1221. Similar to Item 3, this note clarifies that the public interest test and national interest test, which may be applied by the Minister to the importation of an article, may override a decision made under the new public safety test for firearms. That is, where an article has failed the public safety test, it may still pass the public interest test or national interest test, and be approved for importation.

Item 131 Part 1 of Schedule 13

1222. This item inserts a note to provide additional clarification to the reader by stating that the public safety test for weapons may be applied to goods in addition to the tests in this Part. If the importation of the goods fails the public safety test for weapons, the importation of the goods will be prohibited unless the Minister gives written permission for the importation of the goods under the public interest test or the national interest test (see subregulation 4H(1A)).

1223. Similar to Item 5, this note clarifies that the public interest test and national interest test, which may be applied by the Minister to the importation of a good, may override a decision made under the new public safety test for weapons. That is, where the good has failed the public safety test, it may still pass the public interest test or national interest test, and be approved for importation.

Division 2—Application of amendments made by this Part

Customs (Prohibited Imports) Regulations 1956

1224. Item 132 At the end of regulation 23

1225. This item amends regulation 23 of the Prohibited Imports Regulations to add new subregulation 23(2) that has the effect of clarifying the application of the amendments made by Part 4 to Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted.

1226. This application provision clarifies which goods may be subject to the new public safety tests for firearms and weapons following commencement of Part 4 of Schedule 4 to the Bill. The test will apply to all new import permission applications for firearms and weapons, and related goods, made at or after commencement, and all those applications that had not been finally decided before commencement. This ensures that all applications being considered at the time of commencement will have the same test applied, and will be subject to the same importation requirements.

1227. The application provision also applies in similar terms to documentation provided at or after commencement, or before commencement.

Part 5—Importation of Firearms

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1228. Part 5 of Schedule 4 Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, amends the Prohibited Imports Regulations to prescribe new requirements for the importation of firearms and related items, under the Prohibited Import Regulations. The amendments are intended to improve community safety by restricting the number and types of firearms which can be imported to Australia.

1229. Division 1 introduces definitions of assisted repeating action and straight pull repeating action firearms and amends the Regulations to impose requirements for the importation of these firearms. These requirements are in line with the existing requirements within Schedule 16 for the importation of semi-automatic firearms. This is designed to prohibit the importation of these firearm types, due to the ability to fire and reload rapidly, for recreational users and restrict them a more a limited category of firearm licence holders, such as for occupational needs, or government uses.

1230. Division 2 introduces requirements for the importation of firearms which are operated using belt-fed ammunition, placing this type of firearm in the highest controlled category.

1231. Division 3 introduces restrictions on the importation of magazines with a capacity of more than 30 rounds to allow for importation of these magazines only where they comply with one of the prescribed tests, such as for use with already highly restricted firearms, such as semi-automatic firearms. This explicitly aligns the Prohibited Import Regulations with Commonwealth obligations in the National Firearms Agreement.

1232. Division 4 introduces a new handgun test for category H articles under the Prohibited Import Regulations. This Division amends the regulations to require Commonwealth importation for handguns instead of under state and territory police certification. This recognises the limited legitimate circumstances requiring their use, and their desirability on the illegal market by serious and organised crime. This will provide appropriate oversight of handgun importation, aligning with other highly restricted firearms, such as semi-automatic rifles, and provide critical oversight of the number of permits for handguns being authorised and for what purpose.

1233. Division 5 introduces identification and serial number requirements to frames and receivers, aligning them with the existing requirements for complete firearms. This will improve the effectiveness of the National Firearms Register and accurate tracking of these items from entry or ‘birth’ into Australia.

1234. Division 6 introduces additional requirements for the importation of skirmish markers to impose identification requirements and safety testing as per all other firearms imported into Australia. This will improve the effectiveness of the National Firearms Register and accurate tracking of these items from entry or ‘birth’ into Australia and protected end users with safety tests. It will also define gel-ball blasters as firearms, bringing them under the Prohibited Import Regulations. This recognises the community safety risk from gel-ball blasters, particularly those that are near indistinguishable in appearance from automatic firearms.

1235. Division 7 introduces a requirement for all importation of firearms to be limited to Australian citizens. Applying for Australian citizenship requires a significant commitment to Australian values and to meet the eligibility requirements, providing an additional layer of community protection.

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1236. Division 8 introduces a requirement to serialise sound suppressors and require visual inspection for the importation of sound suppressors. This will improve the effectiveness of the National Firearms Register and accurate tracking of these items, which are desirable to criminal actors.

1237. Division 9 introduces a requirement to capture speed loaders as firearm accessories, which can be used to rapidly reload a firearm, increasing the potential harm of a shooting incident.

1238. Division 10 sets out the application of the amendments contained in Part 5 of Schedule 6 to the Prohibited Imports Regulations.

Division 1—Assisted repeating action and straight pull repeating action firearms

Customs (Prohibited Imports) Regulations 1956

Item 133 Subregulation 2(1)

1239. This item amends subregulation 2(1) of the Prohibited Imports Regulations to insert new definitions for "assisted repeating action" and "straight pull repeating action". This item signposts the meaning given to these new terms as defined in subregulation 4F(4).

1240. This amendment enables the terms to have the meaning as defined regardless of where the terms are referred to in the Prohibited Imports Regulations. To this effect, this amendment complements the amendments made by item 134 of Part 5 of Schedule 4 to the Combating Antisemitism, Hate and Extremism Bill 2026, when enacted, which give meaning to the new terms.

Item 134 Subregulation 4F(4)

1241. This item amends subregulation 4F(4) of the Prohibited Imports Regulations to give meaning to the terms ***assisted repeating action*** and ***straight pull repeating action***.

1242. Regulation 4F of the Prohibited Imports Regulations prohibits the importation of a firearm, a firearm accessory, a firearm part, a firearm magazine, ammunition, a component of ammunition, or an imitation firearm, unless the item is listed in Part 2 of Schedule 6 and the importation is in accordance with the requirements set out in column 3 of the item.

1243. Subregulation 4F(4) sets out definitions of terms that are used in this regulation.

1244. For the purposes of the Prohibited Import Regulations, a firearm is an ***assisted repeating action*** firearm if it operates with a self-opening repeating action, or a self-closing repeating action, and the cycle of operation of the firearm is partly automated.

1245. For the purposes of the Prohibited Import Regulations, a firearm is a ***straight pull repeating action*** firearm if the firearm is operated by movement of a bolt or handle along a single linear axis (that is, without rotation).

1246. The definitions inserted by this Item complement and give specific meaning to the amendments made by the other items in Part 5 of Schedule 4 relating to straight pull repeating action and assisted repeating action firearms. These firearms operate at a higher

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rate of fire than other firearms, and automate parts of the firearm cycle of operation. Because of this automation and high rate of fire, these firearms pose a risk to community safety and should be regulated consistently with semi-automatic firearms.

Item 135 Part 2 of Schedule 6 (table item 1, column 2, paragraph (c))

1247. This item repeals paragraph (c) in column 2 of table item 1 of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes a new paragraph (c) that refers to a rimfire rifle, other than a semi-automatic rimfire file or an assisted repeating action or straight pull repeating action rifle.

1248. Column 2 of the table sets out the specific firearms, firearm accessories, parts, magazines, ammunition, or components of ammunition or imitation firearms that are subject to the requirements provided for under column 3 under the relevant item.

1249. Paragraph (c) in column 2 of table item 1 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, prior to the amendment made by this item, refers to a rimfire rifle, other than a semi-automatic rimfire rifle.

1250. The purpose of this amendment is to clarify importation requirements for rimfire rifles by specifically addressing rimfire rifles that do not meet the definition of semi-automatic rimfire rifle, or an assisted repeating action or straight pull repeating action rifle, as those items are now addressed separately. The importation of rimfire rifles that do not meet these definitions will continue to be subject to the tests identified in column 3 of table item 1 of Part 2 to Schedule 6.

Item 136 Part 2 of Schedule 6 (table item 2, column 2, paragraph (d))

1251. This item repeals paragraph (d) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulation and substitutes a new paragraph (d) that refers to a repeating action centre fire rifle, other than an assisted repeating action or straight pull repeating action centre fire rifle.

1252. Paragraph (d) of column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, prior to the amendment made by this item, refers to a repeating action centre fire rifle.

1253. The purpose of this amendment is to clarify importation requirements for repeating action centre file rifles by specifically addressing repeating action centre file rifles that do not meet the new definitions of assisted repeating action or straight pull repeating action centre fire rifle, as those items are now addressed separately. The importation of repeating action centre file rifles will continue to be subject to the tests identified in column 3 of table item 2 of Part 2 to Schedule 6.

Item 137 Part 2 of Schedule 6 (table item 2, column 2, paragraph (f))

1254. This item repeals paragraph (f) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes a new paragraph (f) that refers to a repeating bolt action shotgun, other than assisted repeating action or straight pull repeating action shotgun.

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1255. Paragraph (f) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, prior to the amendments made by this item, refers to a repeating bolt action shotgun.

1256. The purpose of this amendment is to clarify importation requirements for repeating bolt action shotguns by specifically addressing repeating bolt action shotguns that do not meet the new definitions of assisted repeating action or straight pull repeating action centre fire rifle, as those items are now addressed separately. The importation of repeating bolt action shotguns will continue to be subject to the tests identified in column 3 of table item 2 of Part 2 to Schedule 6.

Item 138 Part 2 of Schedule 6 (table item 2, column 2, paragraph (g))

1257. This item inserts the words "that is not an assisted repeating action or straight pull repeating action shotgun, and that is" after "lever action shotgun" in paragraph (g) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

1258. Paragraph (g) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, prior to the amendments made by this item, refers to a lever action shotgun, either without a firearm magazine, or fitted with a firearm magazine having a capacity of no more than 5 rounds.

1259. The purpose of this amendment is to clarify existing importation requirements for lever action shotguns by specifically addressing those that are not an assisted repeating action or straight pull repeating action shotgun, and that are either without a firearm magazine, or fitted with a firearm magazine having a capacity of no more than 5 rounds, the importation of the firearm is subject to the tests identified in column 3 of table item 2 of Part 2 to Schedule 6 to the Prohibited Imports Regulations.

Item 139 Part 2 of Schedule 6 (table item 2, column 2, paragraph (ga))

1260. This item repeals paragraph (ga) in column 2 of table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This amendment is necessary as this item is now included as a separate item number in the table by item 140.

Item 140 Part 2 of Schedule 6 (at the end of table item 3, column 2)

1261. This item inserts references to both an assisted repeating action or straight pull repeating action shotgun that is, either without a firearm magazine, or fitted with a firearm magazine of a capacity no greater than 5 rounds, and an assisted repeating action or straight pull repeating action rimfire rifle that is, either without a firearm magazine, or fitted with a firearm magazine of a capacity no greater than 10 rounds at the end of column 2 of table item 3.

1262. The purpose of this amendment is to enhance restrictions on these firearms, and require their importation to satisfy the applicable tests set out in column 3 of table item 3 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. These tests are amended by items 141 and 142 of Part 5 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted.

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1263. This amendment aligns the controls on newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on semi-automatic versions of those firearm types.

Item 141 Part 2 of Schedule 6 (table item 3, column 3)

1264. This item inserts assisted repeating action or straight pull repeating action rimfire rifle into column 3 of table item 3.

1265. The purpose of this amendment is to expressly require the importation of an assisted repeating action or a straight pull repeating action rimfire rifle to satisfy the same tests as applicable to the importation of a semi-automatic rimfire rifle.

Item 142 Part 2 of Schedule 6 (table item 3, column 3)

1266. This item inserts assisted repeating action or straight pull repeating action shotgun into column 3 of table item 3 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

1267. The purpose of this amendment is to expressly require the importation of an assisted repeating action or a straight pull repeating action shotgun to satisfy the same tests as applicable to the importation of a repeating shotgun.

Item 143 Part 2 of Schedule 6 (table item 6, column 2, after paragraph (b))

1268. This item inserts new paragraph (ba) after paragraph (b) of column 2 of table item 6 to expressly provide for the importation of an assisted repeating action or straight pull repeating action rimfire rifle fitted with a firearm magazine of a capacity greater than 10 rounds.

1269. The effect of this amendment is that the importation of an assisted repeating action or straight pull repeating action rimfire rifle fitted with a firearm magazine of a capacity greater than 10 rounds will be required to satisfy the applicable tests for the goods in column 3 of table item 6.

1270. The purpose of this amendment is to align the controls on newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on semi-automatic versions of those firearm types.

Item 144 Part 2 of Schedule 6 (table item 6, column 2, paragraph (da))

1271. This item repeals paragraph (da) in column 2 of table item 6 of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes with two new paragraphs, being new paragraphs (da) and (db). These new paragraphs address an assisted repeating action or straight pull repeating action shotgun fitted with a magazine capacity greater than 5 rounds (da), and an assisted repeating action or straight pull repeating action centre fire rifle (db).

1272. The purpose and effect of this amendment is that the importation of these firearms will be required to satisfy the applicable tests for the firearms in column 3 of table item 6 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This will align the controls on newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on semi-automatic versions of those firearms types.

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Item 145 Part 2 of Schedule 6 (table item 15, column 2, paragraph (d))

1273. This item repeals paragraph (d) in column 2 of table item 15 of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes with a new paragraph (d), which covers assisted repeating action or straight pull repeating action shotguns.

1274. The purpose and effect of this amendment is that the importation of the firearms mentioned will be required to satisfy the applicable tests for the firearms in column 3 of table item 15 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This will align the controls on magazines for newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on magazines for semi-automatic versions of those firearm types.

Item 146 Part 2 of Schedule 6 (table item 16, column 2, after paragraph (c))

1275. This item inserts new paragraphs (d) and (e) after paragraph (c) in column 2 of table item 16 in Part 2 of Schedule 6 of the Prohibited Imports Regulations to cover assisted repeating action or straight pull repeating action rimfire rifles, and assisted repeating action or straight pull repeating action centre fire rifles.

1276. The purpose and effect of this amendment is that the importation of the firearm magazines mentioned will be required to satisfy the applicable tests for the firearm magazines in column 3 of table item 16 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This will align the controls on magazines for newly defined assisted repeating action and straight pull repeating action firearms with the existing controls on magazines for semi-automatic versions of those firearm types.

Item 147 Part 2 of Schedule 6 (cell at table item 16A, column 2)

1277. This item repeals the cell in column 2 of table item 16A of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes a new cell to refer to a detachable firearm magazine (other than a firearm magazine to which table item 14A, 14B or 16 applies), having a capacity of more than 15 rounds, for repeating action centre-fire rifles, whether or not attached to a firearm.

1278. The purpose and effect of this amendment is that the importation of the firearm magazines mentioned will be required to satisfy the applicable tests for the firearm magazines in column 3 of table item 16A of Part 2 of Schedule 6 to the Prohibited Imports Regulations. This will align the controls on magazines for repeating action centrefire rifles other than those made by items 144 and 146.

Division 2—Belt feeders

Customs (Prohibited Imports) Regulations 1956

Item 148 Part 2 of Schedule 6 (table item 1, column 2, paragraph (e))

1279. This item inserts “or is operated using belt-fed ammunition” after “capability” in paragraph (e) in column 2 of table item 1 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

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1280. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 1 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

1281. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12, which have stronger controls on their importation and use given the community safety risk they pose.

1282. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Item 149 Part 2 of Schedule 6 (table item 2, column 2, paragraph (h))

1283. This item inserts "or is operated using belt-fed ammunition" after "capability" in paragraph (h) in column 2 of table item 2 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

1284. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 2 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

1285. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12 , which have stronger controls on their importation and use given the community safety risk they pose.

1286. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Item 150 Part 2 of Schedule 6 (table item 3, column 2, paragraph (a))

1287. This item inserts "or is operated using belt-fed ammunition" after "capability" in paragraph (a) in column 2 of table item 3 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

1288. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 3 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

1289. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12, which have stronger controls on their importation and use given the community safety risk they pose.

1290. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Item 151 Part 2 of Schedule 6 (table item 6, column 2, paragraph (e))

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1291. This item inserts “or is operated using belt-fed ammunition” after “capability” in paragraph (e) in column 2 of table item 6 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

1292. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 6 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

1293. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12, which have stronger controls on their importation and use given the community safety risk they pose.

1294. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Item 152 Part 2 of Schedule 6 (table item 9, column 2, paragraph (d))

1295. This item inserts “or is operated using belt-fed ammunition” after “capability” in paragraph (d) in column 2 of table item 9 to ensure that firearms capable of being operated using belt-fed ammunition are treated the same as fully automatic firearms.

1296. The purpose and effect of this amendment is to exclude these firearms from being covered by table item 9 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

1297. The purpose of this amendment is to align the controls on firearms that operate in this manner to the requirements of firearms covered by table item 12, which have stronger controls on their importation and use given the community safety risk they pose.

1298. Table item 12 limits the importation of these items to where they can meet the official purposes test, the specified purposes test, or the returned goods test. In practice, this places firearms with belt-fed capability in one of the highest controlled categories, at the same restrictions as fully automatic firearms.

Division 3—Magazines over 30 rounds

Customs (Prohibited Imports) Regulations 1956

Item 153 Part 2 of Schedule 6 (after table item 16A)

1299. The purpose of Division 3 is to align the controls on magazines with more than 30 rounds with the agreed treatment provided for by the National Firearms Agreement. Magazines with more than 30 rounds capacity were not previously subject to import restrictions, other than restrictions that applied to specific types of magazines. This ensures magazines not already captured by Part 2 of Schedule 6 to the Prohibited Import Regulations are restricted appropriately.

1300. This item inserts new table item 16B into the table under Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for importation requirements for detachable firearm magazines that have a capacity of more than 30 rounds (other than a firearm magazine to which table item 14A, 14B, 15, 16 or 16A applies), whether or not attached to a firearm.

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1301. For the importation of the goods for new table item 16B (column 2), column 3 of that table item provides that the importation must comply with at least one of either the official purposes test, the specified purposes test, the specified person test, or the returned goods test. The effect of this amendment is a higher restriction is placed on these magazines, and a limited number of tests available to importers to allow for their importation into the country.

Item 154 Part 2 of Schedule 6 (table item 17, column 2, paragraph (a))

1302. This item amends paragraph (a) in column 2 of table item 17 to apply new item number 16B which has been inserted by item 153 above.

1303. This is a consequential amendment that supports the amendments made by item 153 of Part 5 of Schedule 4 to the to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted.

Division 4—Handguns

Customs (Prohibited Imports) Regulations 1956

Item 155 Paragraph 4.1(c) of Part 1 of Schedule 6

1304. This item repeals the paragraph 4.1(c) of Part 1 of Schedule 6 to the Prohibited Imports Regulations, which provides for the requirements applicable to for an importation of an article to comply with the police certification test for category H articles.

1305. The term ***category H article*** is already defined, for the purposes of Schedule 6, under item 3A of Part 4 of Schedule 6 to mean:

- a firearm mentioned in item 9 of Part 2 (other than a firearm that was manufactured before 1 January 1990); or
- a frame or receiver mentioned in item 9B of Part 2 (other than a frame or receiver that was manufactured before 1 January 1900).

1306. The purpose of this amendment is to remove the current police certification authorisations for the importation of category H articles from state and territory policing. When enacted, with certification requirements removed as a form of permission for the importation of handguns, Division 4 will require Commonwealth import permission.

Item 156 Subparagraph 4.1(d)(ii) of Part 1 of Schedule 6

1307. This item removes “or category H” in subparagraph 4.1(d)(ii), effectively removing the requirement for an importation of a category H article to produce to a Collector the statement in the approved form to comply with the police certification test.

1308. The repeal of this paragraph is intended to require Commonwealth import permission for the importation of category H articles.

Item 157 Subitem 4.2 of Part 1 of Schedule 6

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1309. This item repeals subitem 4.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

1310. This is a technical and consequential amendment that supports the repeal of paragraph 4.1(c) of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 155.

Item 158 Subitem 5.1 of Part 1 of Schedule 6

1311. This item inserts category H articles with category C articles in subitem 5.1, which enables the sports shooter test to be a test that can be complied with for the importation of a category H article. This recognises that handguns are commonly used for sports shooting, and this should be an accepted reason for the importation of a category H article.

1312. The purpose of this amendment is to remove the certification requirements from state and territory policing, requiring Commonwealth import permission for category H articles.

Item 159 Subitem 5.2 of Part 1 of Schedule 6 (note)

1313. This item inserts category H articles with restricted category C articles in subitem 5.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

1314. This is a technical and consequential amendment that supports inclusion of category H articles in subitem 5.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 155.

Item 160 Subitem 5A.1 of Part 1 of Schedule 6

1315. This item inserts category H articles with category C articles in subitem 5A.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

1316. This purpose of this amendment enables the international sports shooter test to be a test that can be complied with for the importation of a category H article. This recognises that handguns are commonly used for sports shooting, and this should be an accepted reason for the importation of a category H article.

1317. The purpose of this amendment is to ensure national consistency and remove the certification requirements from state and territory policing, requiring Commonwealth import permission.

Item 161 Subitem 5A.2 of Part 1 of Schedule 6 (note)

1318. This item inserts category H articles with restricted category C articles in subitem 5A.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations.

1319. This is a technical and consequential amendment that supports inclusion of category H articles in subitem 5A.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 160.

Item 162 Item 6 of Part 1 of Schedule 6 (heading)

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1320. This item omits "—Category C and D articles" from item 6 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, and is a technical and consequential amendment that supports inclusion of category H articles in subitem 6.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 163 (below).

Item 163 Subitem 6.1 of Part 1 of Schedule 6

1321. This item inserts category H articles with category D articles in item 6, and enables the dealer test to be a test that can be complied with for the importation of a category H article. This recognises that handguns may be imported into Australia by dealers for legitimate sale, and this should be an accepted reason for the importation of a category H article.

1322. The purpose of this amendment is to ensure national consistency and remove the certification requirements from state and territory policing, requiring Commonwealth import permission.

Item 164 Subitem 6.2 of Part 1 of Schedule 6 (note)

1323. This item inserts category H articles into subitem 6.2 of Part 1 of Schedule 6, and is a technical and consequential amendment that supports inclusion of category H articles in subitem 6.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations, made by item 160.

Item 165 Item 7 of Part 1 of Schedule 6

1324. This item repeals item 7 of Part 1 of Schedule 6 to the Prohibited Imports Regulations and substitutes the new item 7 to establish a handgun test for category H articles.

1325. The purpose of this amendment is to introduce the requirements category H articles must comply with for the handgun test in order to obtain Commonwealth import permission. New subitem 7.1 provides that the importation of a category H article complies with the handgun test if, at or before importation, the Minister gives written permission under this item for the importation of the article. This allows for the new handgun test to be applied by the Minister, or their delegate, to the importation of a category H article either at or before importation. In practice, 'at or before importation' allows for flexibility where import permission is required and has not been sought prior to the good arriving for importation.

1326. New subitem 7.2 provides that the Minister may give written permission for the importation of the article only if the Minister is satisfied that the importer is a certified buyer for the article, certified for business or occupational purposes for the article, a certified collector for the article, or is exempt from holding, or not required to hold, a licence for the article.

1327. The note under new subitem 7.2 draws the reader's attention to particular definitions of phrases in subitems 7.1 and 7.2, and directs the reader to see Part 4 of Schedule 6.

1328. The purpose of this amendment is to ensure there is a test that may be complied with for the importation of handguns under Commonwealth permission, and remove the certification requirements from state and territory policing.

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Item 166 Part 2 of Schedule 6 (cell at table item 9, column 3)

1329. This item repeals the cell at column 3 of table item 9 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, and substitutes with a new cell which removes "soft air handgun". This item updates the importation requirements for handguns to align with other amendments made by this Division, and ensure the new handgun test may be applied to their importation.

1330. The removal of a reference to "soft air rifles" supports the amendments in Division 6 of Part 5 of the Bill to insert requirements relating to the importation of skirmish markers.

1331. The removal of a reference to "soft air handguns" is required as the consolidated definition of "skirmish markers", as inserted under subregulation 4F(4) covers soft air handguns, and any continued reference to soft air handguns in table item 9 is no longer necessary.

1332. The new cell inserted by this item removes the police certification test for handguns, and updates the list of tests that importation of a handgun may comply with to include the handgun test, the sports shooter test, and the international sports shooter test. The police certification This recognises that handguns are commonly used in sports shooting competitions, and relevant tests that support entry into Australia for these competitions should be applied to handguns under Commonwealth import permission.

Item 167 Part 2 of Schedule 6 (table item 9B, column 3, paragraph (d))

1333. This item repeals paragraph (d) in column 3 of table item 9B of Part 2 of Schedule 6 to the Prohibited Imports Regulations and substitutes two new paragraphs, being new paragraphs (d) and (da) which cover the sports shooter test, and the international sports shooter test.

1334. This amendment removes the police certification test from table item 9B as a test which may be applied to the importation of a frame or receiver for a handgun, and substitutes it with the sports shooter and international sports shooter test as tests that can be complied with for the importation of goods covered by column 2 of table item 9B of Part 2 of Schedule 6 to the Prohibited Imports Regulations may apply. This recognises that handguns are commonly used in sports shooting competitions, and relevant tests that support entry into Australia for these competitions should be applied to handguns under Commonwealth import permission.

1335. The purpose of this amendment is to add additional tests that may be complied with for these items, and remove the certification requirements from state and territory policing.

Item 168 Part 2 of Schedule 6 (table item 9B, column 3, after paragraph (e))

1336. This item inserts new paragraph (ea) after paragraph (e) in column 3 of table item 9B of Part 2 of Schedule 6 to the Prohibited Imports Regulations. New paragraph (ea) covers the handgun test.

1337. This amendment introduces the handgun test as a test that can be complied with for the importation of frames or receivers covered by column 2 of table item 9B of Part 2 of

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Schedule 6 to the Prohibited Imports Regulations, including frames and receivers used in connection with handguns.

1338. The purpose of this amendment is to add an additional test that may be complied with to meet importation requirements, and remove the certification requirements from state and territory policing.

Item 169 Part 2 of Schedule 6 (table item 10, column 3, paragraph (d))

1339. This item repeals paragraph (d) in column 3 of table item 10 of Part 2 to Schedule 6 to the Prohibited Imports Regulations and substitutes new paragraphs (d), (da), (db), and (dc) which relate to the sports shooter test, the international sports shooter test, the dealer test, and the handgun test.

1340. This amendment removes the police certification test and substitutes it with the sports shooter test, international sports shooter test, dealer test and the handgun test as tests that can be complied with for the importation of firearms covered by column 2 of table item 10. This item recognises that handguns are commonly used in sports shooting competitions, and relevant tests that support entry into Australia for these competitions should be applied to handguns under Commonwealth import permission. This item also supports other amendments made by this Division to insert the new handgun test and apply the dealer test to Commonwealth import permission for handguns.

1341. The purpose of this amendment is to ensure national consistency, add additional tests that may be complied with and remove the certification requirements from state and territory policing.

Item 170 Part 2 of Schedule 6 (at the end of the cell at table item 17, column 3)

1342. This item adds new paragraphs (f), (g) and (h) at the end of the cell at table item 17 of column 3 of Part 2 of Schedule 6 to the Prohibited Imports Regulations.

1343. This amendment adds the sports shooter test, international sports shooter test, and the handgun test as tests that can be complied with for the importation of firearm magazines covered by column 2 of table item 17 of Part 2 of Schedule 6 to the Prohibited Imports Regulations may apply. This item recognises that handguns and their magazines are commonly used in sports shooting competitions, and relevant tests that support entry into Australia for these competitions should be applied to handgun magazines under Commonwealth import permission. Similarly, this item also supports other amendments made by this Division to ensure the handgun test can be applied to Commonwealth import permission for these articles.

1344. The purpose of this amendment is to ensure national consistency, add additional tests that may be complied with for Commonwealth import permission, and remove the certification requirements from state and territory policing.

Item 171 At the end of subitem 3A.1 of Part 4 of Schedule 6

1345. This item amends subitem 3A.1 of Part 4 of Schedule 6 to the Prohibited Imports Regulations which provides for the meaning of a category H article. The amendment ensures that a firearm part covered by table item 10, and a firearm magazine covered by

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table item 17 of Part 2 of Schedule 6 of the Prohibited Imports Regulations are considered category H articles.

1346. This amendment ensure handguns, and their parts and magazines, are all treated consistently at importation as category H articles, and require Commonwealth import permission.

Division 5—Frames and receivers

Customs (Prohibited Imports) Regulations 1956

Item 172 After paragraph 3E(1)(b)

1347. This item amends subregulation 3E(1) of the Prohibited Imports Regulations to insert a new paragraph 3E(1)(ba) to cover frames and receivers. This provides for a more streamlined requirement for the re-importation of these articles that were exported for use overseas, for example in lawful shooting competitions.

Item 173 Part 2 of Schedule 6 (after table item 2)

1348. This item inserts new table item 2A into the table in Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for importation requirements for the importation of frames or receivers.

1349. For the importation of these goods, column 3 of the new table item provides that the importation must comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test; or
- the police certification test.

1350. Additionally, column 3 of new table item 2A provides that if the frame or receiver was manufactured on or after 1 January 1900 (per item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations), then it must also comply with the identification requirements set out in item 1A.

1351. The purpose of this amendment is to set out the tests for importation of the firearm frames or receivers mentioned and to ensure that firearms frames and receivers are subject to serial number marking and physical inspection on importation, alongside complete firearms. Enhancing the identification requirements for frames and receivers on importation will improve the effectiveness of the NFR and enable accurate tracking of these items.

Item 174 Part 2 of Schedule 6 (table item 2B, column 2)

1352. This item makes a technical and consequential amendment that supports the insertion of new table item 2A, which specifically addresses the importation of a frame or receiver of, or for, a firearm to which item 1 or 2 applies. The amendment of item 2B is needed to

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give effect to the operation of new item 2A without doubling up on requirements for these items.

Item 175 Part 2 of Schedule 6 (after table item 3)

1353. This item inserts new table item 3A to provide for the importation requirements for a frame or receiver of or for a firearm to which table item 3 of Part 2 of Schedule 6 to those Regulations applies.

1354. For the importation of a frame or receiver of, or for, a semi-automatic rimfire rifle, column 3 of table item 3A provides that the importation must comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the police certification test;
- the dealer test; or
- the returned goods test.

1355. For the importation of a frame or receiver of, or for, a semi-automatic shotgun or pump action repeating shotgun, column 3 of table item 3A provides that the importation must comply with at least or of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the police certification test;
- the sports shooter test;
- the international sports shooter test;
- the dealer test; or
- the returned goods test.

1356. Additionally, column 3 of new table item 3A provides that if the frame or receiver was manufactured on or after 1 January 1900 (per item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations), then it must also comply with the identification requirements set out in item 1A.

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1357. The purpose and effect of the amendments made by this item is to set out the tests for importation of the frames and receivers mentioned, and to ensure that firearms frames and receivers are subject to serial number marking and physical inspection on importation, alongside complete firearms. Enhancing the identification requirements for frames and receivers on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

Item 176 Part 2 of Schedule 6 (at the end of the cell at table item 4, column 2)

1358. This item adds a new paragraph (c) at the end of the cell at table item 4 of column 2 which ensures that table item 4 no longer covers a frame or receiver for a firearm part of, or for, a firearm to which table item 3 applies. Removing frames and receivers from other firearms parts ensures these items are not listed in both items and provides clarity as to which importation requirements apply.

Item 177 Part 2 of Schedule 6 (after table item 6)

1359. This item inserts new table item 6A into the table in Part 2 of Schedule to provide for importation requirements for the importation of a frame or receiver of, or for, a firearm to which table item 6 applies.

1360. For the importation of frames or receivers of firearms listed in table item 6 (including semi-automatic firearms), column 3 of new table item 6A provides that the importation must comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the returned goods test; or
- the dealer test.

1361. Additionally, column 3 of new table item 6A provides that if the frame or receiver was manufactured on or after 1 January 1900 (per item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations), then it must also comply with the identification requirements set out in item 1A.

1362. The purpose and effect of this amendment is to set out the tests for importation of the goods mentioned and to ensure that firearms frames and receivers are subject to serial number marking and physical inspection on importation, alongside complete firearms. Enhancing the identification requirements for frames and receivers on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

Item 178 Part 2 of Schedule 6 (at the end of the cell at table item 7, column 2)

1363. This item adds a new paragraph (c) at the end of the cell at column 2 of table item 7 to ensure it no longer covers a frame or receiver for a firearm part of, or for, a firearm to

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which table item 6 applies, other than a firearm part. Removing frames and receivers from other firearms parts ensures these items are not listed in both items and provides clarity as to which importation requirements apply.

Item 179 Part 2 of Schedule 6 (table item 7, column 3)

1364. This item amends column 3 of table item 7 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to remove duplicative references to frames and receivers in this item. The phrase "For a frame or receiver to which item 1A of Part 3 of this Schedule applies, the frame or receiver must comply with the identification requirements set out in the item." is omitted to clarify that these items no longer need to comply with the requirements under item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations in addition to the tests set out in column 3 of table item 7.

Item 180 Part 2 of Schedule 6 (after table item 12)

1365. This item inserts new table item 12A to provide for importation requirements for the importation of a frame or receiver of, or for, a firearm to which table item 12 applies.

1366. For the importation of these items, column 3 of that table item provides that the importation must comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the returned goods test.

1367. Additionally, column 3 of new table item 12A provides that if the frame or receiver was manufactured on or after 1 January 1900 (per item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations), then it must also comply with the identification requirements set out in item 1A.

1368. The purpose and effect of this amendment is to set out the tests for importation of frames and receivers, and to ensure they are subject to serial number marking and physical inspection on importation, alongside complete firearms. Enhancing the identification requirements for frames and receivers on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

Item 181 Part 2 of Schedule 6 (table item 13, column 2)

1369. This item excludes frames or receivers from being covered by the importation test set out for the importation of goods covered by table item 13 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. Removing frames and receivers from other firearms parts ensures these items are not listed in both items and provides clarity as to which importation requirements apply.

Item 182 Part 2 of Schedule 6 (table item 13, column 3)

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1370. This item omits the text "For a frame or receiver to which item 1A of Part 3 of this Schedule applies, the frame or receiver must comply with the identification requirements set out in the item".

Division 6—Skirmish markers

Customs (Prohibited Imports) Regulations 1956

Item 183 Subregulation 2(1)

1371. This item amends subregulation 2(1) of the Prohibited Imports Regulations to insert a new definition for "skirmish marker", which is signposted to have the meaning given by subregulation 4F(4) of those Regulations.

1372. This amendment enables the term to have the meaning as defined regardless of where the terms are referred to in the Prohibited Imports Regulations. To this effect, this amendment complements the amendments made by item 186, which give meaning to the new term.

Item 184 After paragraph 3E(1)(g)

1373. This item amends subregulation 3E(1) of the Prohibited Imports Regulations to insert a new paragraph 3E(1)(ga) to cover skirmish markers and their parts. This provides for a more streamlined requirement for the re-importation of these articles that were exported for use overseas, for example in lawful shooting competitions.

Item 185 Subregulation 4F(4) (at the end of paragraph (c) of the definition of *firearm*)

1374. This item amends the definition of "firearm" under subregulation 4F(4) of the Prohibited Imports Regulations to insert new subparagraph (xiii).

1375. The insertion of new subparagraph (xiii) operates to provide that a firearm, as defined in subregulation 4F(4), does not include a low power device that meets the requirements of a projectile toy under Consumer Goods (Projectile Toys) Safety Standard 2020, as in force from time to time.

1376. The Consumer Goods (Projectile Toys) Safety Standard 2020 is accessible free of charge on the Federal Register of Legislation. This standard is exempt from sunsetting so its inclusion by name can be supported going forward. Additionally, standards that are set by the Australian Competition and Consumer Commission can be found freely and available to the public through the ACCC's website.

1377. The purpose of this item is to clarify that low projectile toys and power projectile toys under the Consumer Goods (Projectile Toys) Safety Standard 2020 are not included in the definition of firearm for the purposes of the Prohibited Imports Regulations.

Item 186 Subregulation 4F(4)

1378. This item inserts the definition of a "skirmish marker" into subregulation 4F(4) of the Prohibited Items Regulations. A skirmish marker means a firearm that is designed to fire plastic, polymer or hydrated superabsorbent polymer balls, darts, discs or similar

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projectiles of any material; and includes goods commonly known as airsoft handguns, airsoft rifles, airsoft shotguns, blasters, gel blasters or gel ball blasters.

1379. This amendment complements the amendments made by item 195 of Part 5 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, which refers to this term.

Item 187 Part 2 of Schedule 6 (table item 1, column 2, paragraph (b))

1380. This item repeals paragraph (b) of column 2 of table item 1 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to remove the reference to "soft air rifles" in that table item. This supports the amendments in Division 6 of Part 5 of the Bill which inserts requirements relating to the importation of skirmish markers. As the consolidated definition of "skirmish markers" covers soft air rifles, any continued reference to soft air rifles in table item 1 is no longer necessary.

Item 188 Part 2 of Schedule 6 (cell at table item 1, column 3)

1381. This item repeals the cell at column 3 of table item 1, and substitutes with a new cell removing the requirements for soft air rifles.

1382. The new cell, which applies in relation to the firearms mentioned in table item 1 (inserted by item 188), provides that the importation of the firearms mentioned must comply with one of the following tests:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the police certification test.

1383. The removal of a reference to "soft air rifles" supports the amendments in Division 6 of Part 5 of the Bill which inserts requirements relating to the importation of skirmish markers. As the consolidated definition of "skirmish markers" covers soft air rifles, any continued reference to soft air rifles in table item 9 is no longer necessary.

Item 189 Part 2 of Schedule 6 (table item 9, column 2, paragraph (c))

1384. This item repeals paragraph (c) at column 2 of table item 9 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to remove the reference to "soft air handgun" in that table item. This supports the amendments in Division 6 of Part 5 of the Bill which inserts requirements relating to the importation of skirmish markers. As the consolidated definition of "skirmish markers" covers soft air handguns, any continued reference to soft air handguns in table item 9 is no longer necessary.

Item 190 Part 2 of Schedule 6 (table item 12, column 2, paragraph (a))

1385. This item omits "or 14A" in paragraph (a) of column 2 of table item 12 of Part 2 of Schedule 6 to the Prohibited Imports Regulations, and substitutes with ", 14A or 14B".

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1386. This is a consequential amendment that supports amendments made by item 191 of Division 6 of Part 5 of Schedule 4 to the Combating Antisemitism, Hate and Extremism Bill 2026, when enacted to insert requirements relating to the importation of skirmish markers and provide clarity as to which importation requirements apply.

Item 191 Part 2 of Schedule 6 (after table item 14A)

1387. This item inserts new table item 14B into Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for the importation requirements for the importation of:

- skirmish marker, other than a skirmish marker that: is substantially the same in appearance as a fully automatic firearm; or to which a firearm accessory is attached or is integral;
- firearm part of, or for, a skirmish marker mentioned in new table item 14B;
- detachable firearm magazine (other than a gravity fed skirmish hopper) designed exclusively for use with a skirmish marker;
- Plastic, polymer or hydratable superabsorbent polymer balls designed to be used as ammunition in a skirmish marker.

1388. For the importation of the goods mentioned for new table item 14B (column 2), column 3 of that table item provides that the importation of the goods mentioned must comply with the police certification test.

1389. Additionally, column 3 of the new table item provides that:

- for a firearm, frame or receiver to which item 1A of Part 3 of Schedule 6 to the Prohibited Imports Regulations applies, the firearm, frame or receiver must comply with the identification requirements set out in item 1A;
- for a firearm to which item 1 of Part 3 of Schedule 6 to the Prohibited Imports Regulations applies, the firearm must comply with the safety requirements set out in item 1.

1390. Gel ball blasters, air soft firearms, and other skirmish markers are constructed using similar parts and fire similar types of ammunition, however they have not been treated consistently in the Prohibited Import Regulations. These amendments will treat these items the same under a single definition, which will support national consistency in dealing with these items as firearms for import purposes. The purpose and effect of this amendment is to set out the tests for importation of the goods mentioned.

1391. This item amends how these firearms are treated at the border, however it does not control how these items are then regulated at the state and territory level.

Item 192 Part 2 of Schedule 6 (table items 15 and 16, column 2)

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1392. This item amends column 2 of table items 15 and 16 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to insert " or 14B" after "item 14A" to exclude goods covered by new table item 14B from table items 15 and 16.

1393. The purpose of this amendment is to complement the insertion of new item 14B, which provides for the goods mentioned in that item, including detachable magazines and provide clarity as to which importation requirements apply.

Item 193 Part 2 of Schedule 6 (table item 17, column 2, paragraph (a))

1394. This item amends paragraph (a) in column 2 of table item 17 of Part 2 of Schedule 6 to the Prohibited Imports Regulations to insert "14B," after "item 14A," to exclude goods covered by new table item 14B from table item 17.

1395. The purpose of this amendment is to complement the insertion of new item 14B, which provides for the goods mentioned in that item, including magazines and provide clarity as to which importation requirements apply.

Division 7—Proof of citizenship

Customs (Prohibited Imports) Regulations 1956

Item 194 At the end of subitem 3.2 of Part 1 of Schedule 6

1396. This item inserts new paragraph (c) at the end of subitem 3.2 of Part 1 of Schedule 6 to the Prohibited Imports Regulations to set an additional requirement in the specified persons test.

1397. Subitem 3.2 of Part 1 of Schedule 6 sets out the circumstance under which the Minister may give permission for the importation of an article to which the specified persons test applies. Subitem 3.2 provides that the Minister may give written permission for the importation of the article only if the Minister is satisfied that:

- the importer of the article is a person whose occupation is partly or wholly the business of controlling vertebrate pest animals; and

- the importer holds a licence or authorisation, in accordance with the law of the State or Territory in which the importer will carry out that occupation, to possess the article for the purpose of carrying out that occupation.

1398. New paragraph 3.2(c) operates to require that the importer has produced evidence that the importer is an Australian citizen.

1399. The purpose of this amendment is to Australian citizens. This recognises that, for Australia Citizens that applied, the citizenship application process provides an additional layer of community protection to complement fit and proper purposes test for firearms licences conducted by state and territory firearms registries. This amendment relates only to importation.

Division 8—Firearm sound suppressors

Customs (Prohibited Imports) Regulations 1956

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Item 195 Part 2 of Schedule 6 (at the end of the cell at table item 11, column 2)

1400. The amendment will ensure that the requirements in table item 11 will not duplicate requirements on these items, as new table item 13A will specifically provide for the requirements for the importation of firearm accessories that are silencers, sound moderators, sound suppressors, or other similar device.

Item 196 Part 2 of Schedule 6 (after table item 13)

1401. This item inserts new item 13A into Part 2 of Schedule 6 to the Prohibited Imports Regulations to provide for the importation requirements for a firearm accessory that is a silencer, sound moderator, sound suppressor or any other device designed to reduce, or capable of reducing, the noise of discharge of a firearm.

1402. For the goods mentioned for new table item 13A (column 2), column 3 of that table item provides that the importation of the goods must comply with one of the following tests:

- the official purposes test;
- the specified purposes test;
- the returned goods test.

1403. For the importation of the goods mentioned, the importation of the goods must also comply with the identification requirements set out in new item 1AA of Part 3 of Schedule 6 to the Prohibited Imports Regulations.

1404. The purpose of this item is to ensure all sound suppressors require serial number and visual inspection on importation and enable them to be recorded and tracked within the National Firearms Register (NFR). Enhancing the identification requirements for sound suppressors on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or ‘birth’ into Australia.

Item 197 Part 2 of Schedule 6 (at the end of the cell at table item 14, column 2)

1405. The amendment will ensure that the more general requirements in table item 14 will not duplicate requirements on these items. This amendment is necessary as new table item 13A will specifically provide for the requirements for the importation of firearm accessories that are silencers, sound moderators, sound suppressors, or other similar devices.

Item 198 After item 1A of Part 3 of Schedule 6

1406. This item inserts new item 1AA in Part 3 of Schedule 6 to the Prohibited Imports Regulations to provide for identification requirements for silences, sound moderators, and sound suppressors. New subitems 1AA(1) and 1AA(2) provides the identification and inspections requirements, including the type of serialisation.

1407. The purpose of this item is to ensure all sound suppressors have serial numbers and undergo a visual inspection on importation and enable them to be recorded and tracked in

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the National Firearms Register. Enhancing the identification requirements for sound suppressors on importation will improve the effectiveness of the NFR and enable accurate tracking of these items from their entry, or 'birth' into Australia.

Division 9—Speed loaders

Customs (Prohibited Imports) Regulations 1956

Item 199 Subregulation 4F(4) (before paragraph (f) of the definition of *firearm accessory*)

1408. This item amends the definition of "firearm accessory" in subregulation 4F(4) of the Prohibited Imports Regulations to insert a new paragraph (d) such that any speed loaders, whether or not complete, damaged, temporarily or permanently inoperable, or unfinished, are also covered by that definition.

1409. New paragraph (d) covers a device that holds multiple rounds of ammunition, other than ammunition mentioned in table item 14A or 14B of Part 2 of Schedule 6 to the Prohibited Imports Regulations, in alignment for the purpose of quickly reloading a firearm, a cylinder or a firearm magazine.

1410. The new paragraph (d) of the definition of "firearm accessory" expressly excludes articles to which table items 14A and 14B of Part 2 of Schedule 6 to the Prohibited Imports Regulations apply. This exclusion in new paragraph (d) of the definition of "firearm accessory" is intended to have the net result of allowing the importation of all intended articles that could attach to articles to which table items 14A and 14B to be dealt with the importation requirements as set out in those table items.

1411. Speed loaders are devices used for quickly reloading firearms. These devices hold multiple rounds (including cartridges for revolvers, self-loading pistols, rifles or shotgun shells) in alignment enabling the rounds to be inserted into a firearm's cylinder or magazine all at once. Speed loaders save both time and effort as these devices avoid each bullet needing to be loaded individually.

1412. The effect of this amendment is to regulate the importation of speed loaders. Classifying speed loaders as a firearm accessory enables the appropriate import controls on these devises as outlined in table items 11 and 14 of Part 2 of Schedule 6 to the Prohibited Imports Regulations. As a result of these amendments, importers of speed loaders would be required to comply with at least one of the following tests:

- the official purposes test;
- the specified purposes test;
- the returned goods test.

Division 10—Application of amendments made by this Part

Customs (Prohibited Imports) Regulations 1956

Item 200 At the end of regulation 23

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1413. This item amends regulation 23 of the Prohibited Imports Regulations to add new subregulation 23(3) that has the effect of clarifying the application of the amendments made by Part 5 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted.

1414. New subregulation 23(3) provides that amendments of the Prohibited Imports Regulations, made by Part 5 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, apply in relation to:

- any application for permission to import goods into Australia made at or after the commencement of that Part; and
- any application for permission to import goods into Australia made before that commencement that has not been finally decided; and
- any documentation given at or after that commencement to facilitate the importation of goods into Australia; and
- any documentation given before that commencement to facilitate the importation of goods into Australia, where the goods are imported into Australia on or after that commencement.

1415. This application provision clarifies which goods may be subject to the amended importation requirements made by Part 5 of Schedule 4 following commencement of the Bill. The amended requirements will apply to all new import permission applications for firearms and weapons, and related goods, made at or after commencement, and all those applications that had not been finally decided before commencement. This ensures that all applications being considered at the time of commencement will have the same requirements applied, and will therefore be subject to the same importation considerations.

1416. The application provision also applies in similar terms to documentation provided at or after commencement, or before commencement.

Part 6—Approved forms for police certification for firearms imports

1417. The amendments contained in Part 6 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, remove the use of open-ended permits for the police certification tests for the importation of lower category firearms (Category A and B equivalents) and weapons. The effect of these amendments is that the importation of firearms can still be obtained through the use of a single permit for each import application.

Division 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item 201 At the end of item 4 of Part 1 of Schedule 6

1418. This item inserts new subitem 4.2 after subitem 4.1 of Part 1 of Schedule 6 to the Prohibited Imports Regulations. The purpose of the amendment is to cease allowing

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importation of firearms and related goods to which the police certification test applies, which rely on a statement given by a relevant police representative by completing form B709DA for lower category firearms (Category A and B equivalents), regardless of whether the statement was given to the importer before that day.

1419. This amendment removes ongoing certification by state and territory police, and requiring certification for each import. This strengthens the framework by providing increased visibility of the specific goods being imported, and ensures consistency with contemporary government priorities and recent state and territory reforms. Open-ended, or ongoing, permits can be used support to import large quantities of goods over a long period of time (up to five years) with limited oversight of the specific items and their serial numbers intended for import.

Items 202-205

1420. These items make amendments to complement and repeal paragraphs to give effect to removing ongoing certification by state and territory police, and requiring certification for each import.

Item 206 Item 6 of Part 1 of Schedule 13

1421. This item amends item 6 to insert "6.1" before the words "The importation". This amendment is made to complement the amendment made by item 207, which inserts new subitem 6.2 into Part 1 of Schedule 13 to the Prohibited Imports Regulations.

Item 207 At the end of item 6 of Part 1 of Schedule 13

1422. This item adds new subitem 6.2 into item 6 of Part 1 of Schedule 13 to the Prohibited Imports Regulations. The purpose of the amendment made by this item is to cease allowing importation of weapons and weapons parts to which the police certification test applies that rely on a statement given by a police representative by completing form B709X, regardless of whether the statement was given to the importer before that day.

1423. This amendment removes ongoing certification by state and territory police, and requiring certification for each import. This strengthens the framework by providing increased visibility of the specific goods being imported, and ensures consistency with contemporary government priorities and recent state and territory reforms. Open-ended, or ongoing, permits can be used support to import large quantities of goods over a long period of time (up to five years) with limited oversight of the specific items intended for import.

Division 2—Application provisions

Customs (Prohibited Imports) Regulations 1956

Item 208 At the end of regulation 23

1424. This item inserts new subregulation 23(4) at the end of regulation 23 of the Prohibited Imports Regulation to set out the goods to which the amendments made by Part 6 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, apply.

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1425. New subregulation 23(4) has the effect that the amendments of the Prohibited Imports Regulations, made by Part 6 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, apply in relation to:

- any documentation given at or after that commencement to facilitate the importation of goods into Australia; and

- any documentation given before that commencement to facilitate the importation of goods into Australia, where the goods are imported into Australia on or after that commencement.

Part 7 – Offences relating to use of carriage service for firearms and explosives manufacture material

Division 1 – Main amendments

Criminal Code Act 1995

Item 209 – After Subdivision HA of Division 474 of the Criminal Code

1426. This item would insert new Subdivision HB – Offences relating to use of carriage service for firearms and explosives manufacture material, into Division 474 of the Criminal Code. The new subdivision would contain new sections 474.45F to 474.45J.

1427. The offences in new Subdivision HB would complement state and territory laws which criminalise the illicit manufacture of firearms and explosives, through the introduction of Commonwealth offences that target the handling of material which provides instruction or otherwise facilitates manufacture or modification of firearms, explosive devices, and associated things. This would capture, for example, files for 3D printing of firearms. Noting the significant harm of violent offending, including terrorism, that illicit firearms pose to the community, it is critical that this enabling material is criminalised to prevent this harm.

1428. The new offences would not be intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory, as per the operation of section 475.1 of the Criminal Code. This would include similar State and Territory offences, such as offences for the possession, production or distribution of extremist or dangerous material, which would continue to operate alongside the offences in Subdivision HB. This approach would be consistent with the approach taken in other areas of criminal law, such as terrorism, fraud, computer crime, money laundering, drug offences and sexual servitude. It is intended that the offences would be investigated in accordance with the established division of responsibility between Commonwealth, State and Territory law enforcement agencies.

1429. Category A geographical jurisdiction, as outlined in section 15.1 of the Criminal Code, would apply to the offences in Subdivision HB through the operation of section 475.2. Category A geographical jurisdiction means that the offence applies to conduct that occurs wholly or partly in Australia or offending where the result occurs wholly or partly in Australia, the conduct is engaged in by an Australian. Category A geographical jurisdiction would also cover instances where an Australian citizen in another country

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engages in conduct that is an offence, even if that citizen's conduct does not constitute an offence in that other country and the results of that conduct do not affect Australia.

Section 474.45F Meaning of firearms and explosives manufacture material

1430. New section 474.45F would set out the definition of ***firearms and explosives manufacture material***. It would provide that in order to constitute firearms and explosives manufacture material, material must satisfy the matters in either paragraph 474.45F(1)(a) or (b).

1431. The definition of ***material*** in existing section 473.1 of the Criminal Code would apply to Subdivision HB. This provides that material includes material in any form, or combination of forms, capable of constituting a communication. The intention is for this term to capture a variety of formats including, but not limited to, text, audio, visual or audio-visual material, or a combination of these formats.

1432. New paragraph 474.45F(1)(a) would provide that firearms and explosives manufacture material is material that provides instructions on the manufacture or modification of:

- a firearm, firearm accessory, firearm part, firearm magazine, ammunition or component of ammunition (subparagraph 474.45F(1)(a)(i)); or
- an explosive or other lethal device (subparagraph 474.45F(1)(a)(ii)).

1433. Alternatively, new paragraph 474.45F(1)(b) would provide that firearms and explosives manufacture material is also material that supports or facilitates the manufacture or modification of:

- a firearm, firearm accessory, firearm part, firearm magazine, ammunition or component of ammunition (subparagraph 474.45F(1)(b)(i)); or
- an explosive or other lethal device (subparagraph 474.45F(1)(b)(ii)).

1434. New subsection 474.45F(2) would have the effect that, even where material is reasonably considered to have multiple intended purposes, it can nonetheless meet the requirements in paragraphs 474.45F(1)(a) or (b), if the material is intended to do one or more other things. For example, a document might include instructions for modifying a firearm as part of broader discussion on historical weaponry or engineering principles. Even if the primary purpose of the material is educational or technical, the inclusion of instructions or guidance that could reasonably be used to manufacture or modify an illicit firearm or explosive means the material falls within the definition. This ensures that the offence cannot be avoided simply because the material has multiple purposes. The provision is designed to prevent individuals from relying on claims of alternative intention to circumvent the offences, noting that legitimate uses are protected through express defences in section 474.45J.

1435. New subsection 474.45F(3) would clarify that material is also firearms and explosives manufacture material if:

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- it is reasonable to consider the material together with other material (paragraph 474.45F(3)(a)); and

- were all of the material to be taken to be a single item of material, it would constitute firearms and explosives manufacture material under subsection 474.45F(1) (paragraph 474.45F(3)(b)).

1436. New subsection 474.45F(3) means that the definition of firearms and explosives manufacture material could be satisfied by a collection of material where it would be reasonable to consider the material together. It is intended to recognise that a collection of material may have a different character than an individual piece of material considered in isolation. For example, a person might possess separate documents – one containing a diagram of firearms components, and another containing instructions for assembling the components. When considered separately, these documents alone may not meet the definition of firearms and explosives manufacture material. However, when reasonably considered together, they may clearly support or facilitate manufacture of a firearm. This provision ensures that a person would not be able to avoid criminal liability under new Subdivision HB by keeping different items of material separate to avoid the material meeting all the requirements in subsection 474.45F(1).

1437. The requirement in paragraph 474.45(3)(a), that it is reasonable to consider two or more pieces of material together, is intended to safeguard against arbitrariness in determining whether other material should be considered together in a given situation. Matters that may be relevant to determining whether it is reasonable to consider two or more items of material together may include that the items of material are stored on a single device, shared with others in a single email or text message chain or uploaded as a single digital file. However, circumstances in which other material is stored or shared separately are not intended to automatically exclude the possibility that it would be reasonable to consider the material together. The matters relevant to making such a determination would be case dependant.

1438. New subsection 474.45F(4) clarifies that material may still be considered firearms and explosives manufacture material even if it would not be possible to use the material to manufacture or modify:

- a functional firearm, functional firearm accessory, functional firearm part, functional firearm magazine or functional ammunition or component of ammunition (paragraph 474.45F(4)(a)), or

- a functional explosive or other lethal device (paragraph 474.45F(4)(b)).

1439. This would ensure that the definition of firearms and explosives manufacture material captures material that contains instruction or information relevant to weapon or explosive manufacture, regardless of whether following those instructions or information would result in a working or operable firearm, firearm accessory, firearm part, firearm magazine, ammunition or component of ammunition or explosive or other lethal device, or an imitation of any of these items. For example, a document might provide steps for producing a firearm but omit critical specifications, meaning the resulting product does

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not fire; or a video might demonstrate how to assemble an explosive device but leave out key components, making the device inactive.

1440. Material that facilitates the manufacture of imitations, such as replica firearms or dummy ammunition, poses a significant risk because it can be combined with other information or material to enable illicit manufacture. Replica weapons can also be used to intimidate or present a threat of harm or violence to the public.

1441. New subsection 474.45F(5) would define key terms for the purposes of new Subdivision HB, including ***component of ammunition***, ***firearm***, ***firearm accessory***, ***firearm magazine*** and ***firearm part***. Each of these terms are defined to have the same meaning as in the Customs (Prohibited Imports) Regulations 1956 (Customs Regulations):

- ***Component of ammunition*** is defined to include any part designed for use in ammunition, such as cartridge cases, primers, propellant powder or projectiles. These components are essential for producing functional ammunition and can be combined with other parts to create lethal rounds.

- ***Firearm*** is defined as a device designed or adapted to discharge a projectile by means of an explosive charge or compressed gas. This includes rifles, pistols, shotguns and other weapons capable of firing projectiles.

- ***Firearm accessory*** is defined to include items designed to be attached to a firearm to enhance its function, such as silencers, scopes or mounts. These accessories can significantly increase the effectiveness or concealability of a weapon.

- ***Firearm magazine*** is defined as a container or device for holding and feeding ammunition into a firearm.

- ***Firearm part*** is defined as any component essential to the operation of a firearm, such as barrels, frames, receivers or triggers. These parts can be assembled into a working firearm even if other components are missing.

1442. The term ***ammunition*** would take its ordinary meaning. The Macquarie Dictionary defines ammunition as all the material used in discharging all types of firearms or any weapon that throws projectiles; powder, shot, shrapnel, bullets, cartridges, and the means of igniting and exploding them, as primers and fuses.

1443. ***Explosive or other lethal device*** is defined in new subsection 474.45F(5) as having the same meaning as in the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997 per section 72.1 of the Criminal Code. That Convention defines the term to include substances and devices intended to cause an explosion or lethal effect, including improvised explosive devices. The definition is broad and captures both commercial explosives and homemade devices.

1444. Incorporating these definitions in this way would ensure consistency with existing Commonwealth legislation and international obligations - providing clarity for law enforcement agencies and the public. It also ensures that the scope of the offences comprehensively capture all relevant components and devices that could enable the

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manufacture or modification of firearms, ammunition or explosives, including parts, accessories and material that, when combined, could produce a functional weapon or explosive device.

Section 474.45G Using a carriage service for firearms and explosive manufacture material

1445. New section 474.45G would set out the new offence for using a carriage service for firearms and explosive manufacture material.

1446. To make out the offence, the prosecution must prove all of the following:

- the person accesses the material, or causes the material to be transmitted to the person, transmits, makes available, publishes, distributes, advertises, promotes or solicits material, or does any of the prior conduct in relation to a link that can be used to access the material (paragraph 474.45G(1)(a)),

- the person does so using a carriage service (paragraph 474.45G(1)(b)), and

- the material is firearms and explosives manufacture material (paragraph 474.45G(1)(c)).

1447. The terms in new paragraph 474.45G(1)(a) are intended to cover a broad range of activities that a person could undertake in relation to firearms and explosives manufacture material which amount to dealing with the material or a link to the material via a carriage service. This would include actions a person takes with firearms and explosives manufacture material or an electronic link in relation to such material, and actions a person takes that enables others to engage with firearms and explosives manufacture material or an electronic link to that material. This would reflect the significant risk posed by the dissemination of such material given its potential to facilitate illicit weapon or explosive manufacture or production.

1448. New subparagraph 474.45G(1)(a)(i) provides that a person commits an offence if they access firearms and explosives manufacture material. Section 473.1 of the Criminal Code defines access for the purpose of Part 10.6 (in which the new firearms and explosives manufacture material offences are located). The term includes the display of material by a computer or any other output of the material from a computer, or the copying or moving of the material to any place in a computer or to a data storage device.

1449. ***Makes available*** in new subparagraph 474.45G(1)(a)(iii) is defined in the Criminal Code Dictionary as including, but not limited to, describing how to obtain access, or describing methods that are likely to facilitate access, to material (for example: by setting out the name of a website, a password or the name of a newsgroup). Other terms in paragraph 474.45G(1)(a) would take their ordinary meaning.

1450. The offence treats dealing with an electronic link to material in the same manner as the material itself to recognise the mechanisms commonly used to deal with material through a carriage service. Dealing with an electronic link to the material, such as sending a hyperlink, is simply a method of dealing with the material itself which gives the recipient ready access to the material and will bring about the same impact. The offence has been crafted in such a way to capture both forms of conduct.

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1451. New paragraph 474.45G(2)(a) would provide that the fault element attached to new paragraph 474.45G(1)(a) is intention. 'Intention' is defined in section 5.2 of the Criminal Code.

1452. New paragraph 474.45G(1)(b) would require that the defendant used a carriage service in relation to the firearms and explosives manufacture material or an electronic link to the material. Using a carriage service (paragraph 474.45G(1)(b)) provides the relevant connection to the legislative power under paragraph 51(v) of the *Constitution*. The term 'carriage service' is defined in the Criminal Code Dictionary as having the same meaning as in the *Telecommunications Act 1997.* Use of a carriage services includes, but is not limited to, use of the internet, web pages, social media applications, email, chat forums, text messages and radio.

1453. New subsection 474.45G(3) would provide that absolute liability, as outlined in section 6.2 of the Criminal Code, would apply to the matter in paragraph 474.45G(1)(b). Paragraph 474.45G(1)(b) sets out a jurisdictional element of the offence. A jurisdictional element is an element that does not relate to the substance of the offence or the defendant's culpability but marks a jurisdictional boundary between matters that fall within the legislative power of the Commonwealth and those that do not. The Guide provides that absolute liability should apply to jurisdictional elements.

1454. New paragraph 474.45G(1)(c) would require that the material is firearms and explosives manufacture material. New section 474.45H would define firearms and explosives manufacture material. New paragraph 474.45G(2)(b) would provide that the fault element attached to paragraph 474.45G(1)(c) 'the material is firearms and explosives manufacture material', is recklessness. 'Recklessness' is defined in section 5.4 of the Criminal Code. By operation of this fault element, a person who accidentally comes across firearms and explosives manufacture material on the internet without any warning from the context would not be caught by the offence, because they would not have been reckless as to the nature of the material.

1455. The offence would carry a maximum penalty of 5 years imprisonment. This maximum penalty reflects the principle in the Guide that an offence should have a 'maximum penalty that is adequate to deter and punish a worst-case offence'. This could include, for example, material designed to support the private manufacture of an illicit firearm or explosive that is concealed or otherwise designed to avoid detection, for use in a terrorist attack. It is also appropriate noting the deterrent and early intervention objectives of the offence and would reflect the potential range of offending that may occur. The 5-year maximum penalty is consistent with existing offences for using a carriage service for violent extremist material.

Section 474.45H Possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service

1456. New section 474.45H would create a new offence for the possession or control of firearms and explosive manufacture material in the form of data held in a computer or contained in a data storage device, where the person used a carriage service to obtain or access the material. The scope of the offence would include control of firearms and explosives manufacture material in the form of data, including material stored in remote

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data storage (including cloud hosting) that may be physically located in Australia or overseas due to the operation of paragraph 473.2(c) of the Criminal Code. The proposed offence would facilitate law enforcement to intervene before an illicit firearm is manufactured and used, reducing the risk of these items being used for acts of violence and enhancing the ability to disrupt potential threats before they escalate.

1457. To make out the offence, the prosecution must prove all of the following:

- the person has possession or control of the material (new paragraph 474.45H(1)(a))
- the material is in the form of data held in a computer or contained in a data storage device (new paragraph 474.45H(1)(b))
- the person used a carriage service to obtain or access the material (new paragraph 474.45H(1)(c))
- the material is firearms and explosives manufacture material (new paragraph 474.45H(1)(d)).

1458. Paragraph 474.45H(1)(a) requires that the person has possession or control of the material. Paragraph 474.45H(2)(a) clarifies that this intention applies as the fault element for this paragraph. Intention is defined in section 5.2 of the Criminal Code.

1459. The meaning of the terms ***possession*** and ***control***, as used in paragraph 474.45H(1)(a), are clarified in section 473.2 of the Criminal Code. This includes control of data that is located on a remote data storage device, which may be in the physical possession of another person. To determine whether the defendant had control of the material, the prosecution must prove that the person had control of the material and the person intended to have control of the material.

1460. New paragraph 474.45H(1)(b) requires that the material is in the form of data held in a computer or contained in a data storage device. The Criminal Code does not define 'computer'. References to 'computer' are intended to be broad enough to enable the offence to achieve and maintain technological neutrality, and to take into account technological advancements that could occur in the future.

1461. The reference to ***data held in a computer*** in paragraph 474.45H(1)(b) is intended to be broad enough to enable the offence to achieve and maintain technological neutrality, and to take into account technological advancements that could occur in the future. The Criminal Code Dictionary defines 'data held in a computer' as:

- data held in any removable data storage device that is at the time being held in a computer, or
- data held in a data storage device on a computer network of which the computer forms a part.

1462. The Criminal Code Dictionary defines ***data storage device*** as a thing (for example, a disk or file server) containing, or designed to contain, data for use by a computer. The

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reference to data contained in a data storage device includes where the data storage device is physically located in or outside of Australia.

1463. New subsection 474.45H(3) would provide that strict liability, as outlined in section 6.1 of the Criminal Code, would apply to the matter in paragraph 474.45H(1)(b). The effect of applying strict liability to paragraph 474.45H(1)(b) would mean no fault element would need to be proven for that element of the offence, and defence of mistake of fact under section 9.2 of the Criminal Code would be available in relation to that element. Requiring the prosecution to prove that the defendant knew or was reckless as to whether the material was in the form of data held in a computer or contained in a data storage device would undermine enforcement of the offence and deterrence of this conduct, as it would allow defendants to evade liability by remaining wilfully blind to the technical aspects of how the material, in the form of data, was stored.

1464. New paragraph 474.45H(1)(c) would require that the material was obtained or accessed by the defendant by the use of a carriage service. The use of a carriage service provides the relevant connection to the legislative power under paragraph 51(v) of the Constitution. The term ***carriage service*** is defined in the Criminal Code Dictionary as having the same meaning as in the *Telecommunications Act 1997*. Use of a carriage service includes, but is not limited to, use of the internet, web pages, social media applications, email, chat forums, text messages and radio.

1465. New subsection 474.45H(4) would provide that absolute liability, as outlined in section 6.2 of the Criminal Code, would apply to the matter in paragraph 474.45H(1)(c). Paragraph 474.45H(1)(c) sets out a jurisdictional element of the offence. A jurisdictional element is an element that does not relate to the substance of the offence or the defendant's culpability but marks a jurisdictional boundary between matters that fall within the legislative power of the Commonwealth and those that do not. The Guide provides that absolute liability should apply to jurisdictional elements.

1466. New subsection 474.45H(5) would establish a presumption that where a defendant possesses or controls firearms and explosives manufacture material in the form of data held in a computer or contained in a data storage device, that material was obtained or accessed by the defendant using a carriage service. It would have the effect that, if the prosecution proves beyond reasonable doubt that the person had possession or control of material, the material is in the form of data held in a computer or contained in a data storage device, and the material is firearms and explosives manufacture material, it is presumed that the person used a carriage service to obtain or access the material. This presumption would stand unless the defendant proves that they did not obtain or access the material using a carriage service.

1467. The purpose of this presumption would be to address problems encountered by law enforcement agencies in proving beyond reasonable doubt that a carriage service was used to engage in the relevant criminal conduct. Often, evidence that a carriage service was used to engage in the relevant criminal conduct is highly technical. Such evidence can be circumstantial, including for example that the defendant's computer had downloaded instructional manuals, the computer was connected to the internet, and records show the computer accessed websites that suggest an association with the material saved on the hard drive. A presumption in this instance is appropriate, given it is not an element that goes to the substance of the offence or to the person's criminal

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culpability. Rather, it is a jurisdictional element; that is, an element marking a boundary between matters that fall within the legislative power of the Commonwealth, and those that do not.

1468. The onus would be on the defendant to prove that they used a method other than a carriage service to obtain or access the material. The prosecution would not need to prove that the person accessed or obtained the material using a carriage service beyond a reasonable doubt unless the defendant discharged their burden to prove otherwise.

1469. The defendant would bear a legal burden of proof to rebut the presumption. In accordance with sections 13.4 and 13.5 of the Criminal Code, the defendant would be required to discharge this burden on the balance of probabilities. The defendant would be able to rebut the presumption by producing evidence demonstrating on the balance of probabilities that they did not use a carriage service to obtain or access the material.

1470. The offence would carry a maximum penalty of 5 years imprisonment. This maximum penalty reflects the principle in the Guide that an offence should have a 'maximum penalty that is adequate to deter and punish a worst-case offence'. This could include, for example, material designed to support the private manufacture of an illicit firearm or explosive that is concealed or otherwise designed to avoid detection, for use in a terrorist attack. It is also appropriate noting the deterrent and early intervention objectives of the offence and would reflect the potential range of offending that may occur. The 5-year maximum penalty is consistent with existing offences for possessing or controlling violent extremist material obtained or accessed using a carriage service.

Section 474.45J Defences in respect of firearms and explosives manufacture material

1471. New section 474.45J would provide defences in respect of the new offences for using a carriage service for firearms and explosives manufacture material, and possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service. Each of the matters in subsections 474.45J(1) and (2) contain an individual defence, providing a circumstance in which the offence would not apply. These defences have been included to permit legitimate usage of firearms and explosives manufacture material.

1472. New subsection 474.45J(1) would ensure that businesses and their employees who operate under State or Territory licences or permits are not inadvertently criminalised by the new offences in sections 474.45G and 474.45H. It would recognise that certain businesses require access to firearms and explosives manufacture material for lawful purposes such as manufacturing, repairing, maintaining or modifying firearms and explosives in compliance with the conditions of a licence or permit. Firearms regulation in Australia is primarily managed by the States and Territories. Private manufacture of firearms is generally prohibited unless specifically authorised by a permit. In some jurisdictions, individuals may obtain a special licence for manufacture, maintenance, repair or modification. These licences are granted under strict conditions and are typically provided to businesses or professionals, not for personal use. Because these activities are essential to the functioning of regulated businesses and industries, the defence is intended to protect lawful industry practices to avoid disrupting essential operations of licensed

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businesses, while maintaining strict conditions that confine the defence to entities acting within the scope of their licence or permit.

1473. Read together, new paragraphs 474.45J(1)(a) and (b) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply to a person who carries on a business in relation to firearms, firearms accessories, firearms parts, firearm magazines, ammunition or components of ammunition or explosives or other lethal devices, or the person performing work for such a business; and that business holds a valid State or Territory licence or permit authorising the manufacture, repair, maintenance or modification of those items. This would ensure that legitimate businesses and their employees are not inadvertently captured under the new offences, provided that they operate in accordance with a recognised license or permit scheme. The defence would be limited to individuals acting within a regulated business context, such as business owners, employees and contractors who are licenced or permitted to carry out legitimate manufacture, repair, maintenance or modification of firearms.

1474. The requirement that the person must be acting in connection with a business that deals with firearms and explosives and that business must hold a valid State or Territory licence or permit authorising the relevant activities ensures that the defence is intended to balance the need to prevent the misuse of firearms and explosives manufacture material with the need to support businesses who carry out legitimate activities in accordance with a licence or permit issued by a State or Territory. The defence is narrowly targeted at legitimate, regulated industry participants, and is intended to prevent individuals from relying on the defence simply because they work with firearms or explosives without the business itself being properly licenced. It would also prevent licensed businesses from relying on the defence for conduct unrelated to their authorised activities.

1475. New paragraph 474.45J(1)(b) imposes a critical safeguard by requiring that the business owner referred to in paragraph 474.45J(1)(a) holds a licence or permit granted by a State or Territory authority. The licence must authorise the manufacture, repair, maintenance or modification of firearms, firearms accessories, firearms parts, firearm magazines, ammunition or components of ammunition or explosives or other lethal devices, and it must be in force at the time the conduct was engaged in. The requirement for a licence or permit reflects the policy intention to exempt conduct that is engaged in in compliance with existing State and Territory regulatory schemes. Firearms and explosives are subject to strict controls which are primarily administered by States and Territories.

1476. Licences under paragraph 474.45J(1)(b) may authorise other activities beyond manufacture, repair, maintenance or modification. For example, a licence may also permit the sale or distribution of firearms, firearm accessories, firearm parts, firearm magazines, components of ammunition or explosives or other lethal devices. The defence does not extend to activities outside the scope of the licence or to businesses that do not hold a valid authorisation to possess or control firearms and explosives manufacture material. However, where the licence includes additional authorised activities, the defence is intended to remain available provided the conduct relates to the licensed activities and satisfies the other conditions in subsection 474.45J(1). For example, a licensed dealer who also holds a permit to repair firearms could rely on the defence in subsection 474.45J(1) when accessing material for repair purposes, but not when accessing material for activities outside the conditions of the licence. This approach ensures flexibility for

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businesses operating under comprehensive licences while maintaining safeguards against misuse.

1477. New paragraph 474.45J(1)(c) limits the defence to by providing that the material must relate to the things authorised under the licence. This would narrow the scope of the defence to material that is directly relevant to the licensed activities. For example, a licensed gunsmith accessing instructions for repairing a firearm would be covered, but accessing material about unrelated devices, such as explosives, would not. This safeguard is intended to narrow the defence so that it applies only to the matters within scope of the licence or permit referred to in paragraph 474.45J(1)(b).

1478. New paragraph 474.45J(1)(d) further limits the defence to conduct engaged in in connection with the carrying on of a licenced business. This ensures that the defence only applies to legitimate business activities and not to personal or unauthorised use. It is intended to capture conduct that is reasonably necessary or incidental to the operation of the business, including accessing, transmitting or storing firearms and explosives manufacture material on a business computer system for purposes directly related to manufacturing, repairing, maintaining or modifying firearms or explosives in compliance with the conditions of the licence or permit. It would also prevent individuals from avoiding criminal liability by claiming the defence for conduct that is unrelated to their professional role or licensed activities. For example, an employee accessing material for a repair job as part of their employment would be covered, but accessing the same material for private purposes, experimentation or resale outside the scope of the licence or permit would not. Similarly, a business owner who uses the material for activities beyond the authorised scope of the licence, such as creating unapproved devices or engaging in prohibited modifications, would not fall within the scope of the defence.

1479. The note at the end of subsection 474.45J(1) would clarify that the defendant bears an evidential burden in relation to the matters in that subsection in accordance with existing subsection 13.3(3) of the Criminal Code. Subsection 13.3(3) provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant would be required to present evidence suggesting a reasonable possibility that the defence applies.

1480. The Guide sets out the circumstances in which an offence-specific defence is appropriate. These include where there are matters which are peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

1481. The offence-specific defence in subsection 474.45J(1) recognise that the defendant's purpose in dealing with firearms and explosives manufacture material is uniquely within the knowledge of the defendant. They operate on the same principle as other 'lawful authority' defences in the Criminal Code and similar provisions in State and Territory legislation. The defendant is best placed to adduce evidence demonstrating their purpose. For example, a business owner or employee could readily produce a copy of the relevant State or Territory licence or permit and demonstrate that the conduct occurred in connection with the licenced business. Information of this nature is unlikely to be readily available or able to be obtained by the prosecution.

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1482. New subsection 474.45J(2) would provide additional defences in respect of the offences for using a carriage service for firearms and explosives manufacture material, and possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service.

1483. New paragraph 474.45J(2)(a) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is necessary for enforcing a law of the Commonwealth, a State or Territory, a foreign country or a part of a foreign country. This is intended to avoid situations where a conflict of laws requires the material to be handled in a particular way, which would be criminal under the new offences, but is necessary to assist in the enforcing of a law. Paragraph 474.45J(2)(a) would resolve this conflict in favour of supporting the enforcement of the other law.

1484. New paragraph 474.45J(2)(b) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is necessary for monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or Territory, a foreign country, or part of a foreign country. This is intended to ensure that the offences do not compromise legitimate law enforcement procedures or operations. For example, it may be necessary for a person to maintain access to firearms and explosives manufacture material in a situation where access may assist in identifying the perpetrators of the conduct in relation to firearms and explosives manufacture material.

1485. New paragraph 474.45J(2)(c) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is necessary for the purposes of proceedings in a court or tribunal. This is intended to serve as a safeguard to ensure a court or tribunal's access to material is not restricted by the operation of the new offences. The defence would ensure, for example, that a court or tribunal can have access to anything that meets evidential requirements, and that the offences in subsection 474.45G(1) and 474.45H(1) do not restrict this access.

1486. New paragraph 474.45J(2)(d) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is necessary for, or of assistance in, conducting scientific, academic or historical research and the conduct is reasonable in the circumstances for the purpose of conducting that research. For example, this may include where the material is included in an academic paper presenting research that has been conducted into the use and impact of firearms and explosives manufacture material.

1487. New paragraph 474.45J(2)(e) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is in connection with the performance by a public official of that official's duties or functions and the conduct is reasonable in the circumstances for the purpose of performing those duties or functions. For example, it may be necessary for a public official to maintain access to firearms and explosives manufacture material as part of their role as a security or intelligence officer.

1488. New paragraph 474.45J(2)(f) would provide that neither subsection 474.45G(1) nor 474.45H(1) would apply if the conduct in relation to material is in connection with an individual assisting a public official in relation to the performance of the public official's duties or functions and the conduct is reasonable in the circumstances for the purpose of assisting the public official in relation to the performance of the public official's duties or functions. This could include, for example, where the conduct is in connection with a

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person assisting a security or intelligence officer with the performance of the security or intelligence officer's official duties or functions.

1489. The note at the end of subsection 474.45J(2) would clarify that the defendant bears an evidential burden in relation to the matters in that subsection in accordance with existing subsection 13.3(3) of the Criminal Code. Subsection 13.3(3) provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. The defendant would be required to present evidence suggesting a reasonable possibility that the defence applies.

1490. The Guide sets out the circumstances in which an offence-specific defence is appropriate. These include where there are matters which are peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter.

1491. The offence-specific defences in subsection 474.45J(2) recognise that the defendant's purpose in dealing with firearms and explosives manufacture material is uniquely within the knowledge of the defendant. Many of these defences operate on the same principle as other 'lawful authority' defences in the Criminal Code and similar provisions in State and Territory legislation. The defendant is best placed to adduce evidence demonstrating the purpose of their conduct. For example, if the defendant is a forensic scientist conducting academic research into the chemical composition of explosives for public safety purposes, they could readily adduce evidence that their access to firearms and explosives manufacture material was necessary for scientific research and reasonable in the circumstances for the purpose of conducting that research. This evidence might include research protocols, ethics approvals or correspondence with a government agency commissioning the study. Information of this nature is uniquely within the defendant's knowledge and unlikely to be readily available or able to be obtained by the prosecution.

1492. New subsection 474.45J(3) would clarify that it is not intended that the meaning of the terms 'duty' or 'duties', when used in any provision of the Criminal Code other than new section 474.45J, would be affected by the references to 'function' or 'functions' in subsection 474.45J(2). The references to 'function' or 'functions' in subsection 474.45(2) – in particular, paragraphs 474.45J(2)(e) and (f) – are intended to inform the meaning of 'duty' or 'duties' for the purposes of subsection 474.45J(2) only.

Item 210 Subsections 475.1A(1) and (2) of the *Criminal Code*

1493. This item would amend subsections 475.1A(1) and (2) to provide that the defences in section 475.1A also apply to the offences in new Subdivision HB. These defences provide that National Relay Service employees and emergency call persons are not criminally responsible for specific conduct if they engage in that conduct in good faith in the course of the person's duties. The amendments are intended to make clear that such persons would not commit the offences in new sections 474.45G or 474.45H when simply performing their job.

1494. The National Relay Service provides a service for persons who are deaf or have a hearing and/or speech impediment. It facilitates calls with a voice and/or text component between the parties to the call.

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Item 211 Dictionary in the *Criminal Code*

1495. This item would insert the term 'firearms and explosives manufacture material' into the Criminal Code Dictionary and provide that section 474.45F defines this term.

Item 212 Transitional provision

1496. The effect of this item would be that, for the purposes of the offence of possessing or controlling firearms and explosives manufacture material obtained or accessed using a carriage service (new section 474.45H), it does not matter whether the person's use of a carriage service to obtain or access material occurred before, on, or after the commencement of the offence provisions. In other words, if a person used a carriage service to obtain or access firearms and explosives manufacture material before the offence provisions commenced, but they continue to possess or control the material after the provisions commence, they could be prosecuted for the offence. Further, the offences have a delayed commencement of 28 days, which will allow sufficient time for anyone in possession of this material to dispose of it.

1497. The offence would however not apply retrospectively. Circumstances in which the possession or control of firearms and explosives manufacture material occurred wholly before the commencement of the offence provisions and have ceased to exist, would not be captured by the offence.

Division 2—Consequential amendments

Crimes Act 1914

Item 213 At the end of subsection 15GE(3)

1498. This item would amend subsection 15GE(3) of the Crimes Act to explicitly provide that an offence against new Subdivision HB of Division 474 of the Criminal Code is a 'serious Commonwealth offence' for the purpose of Part IAB (controlled operations) of the Crimes Act.

Part 8—Ammunition equipment

1499. The amendments contained in Part 8 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted, amend the Prohibited Imports Regulations to control ammunition equipment designed to be worn on the body and designed for the specific purpose of allowing the wearer to readily access ammunition to increase the speed at which they can reload a firearm. The amendments aim to reduce the harm caused during a shooting incident or terrorist act by reducing the speed and volume of shots a perpetrator can discharge.

Division 1—Amendments

Customs (Prohibited Imports) Regulations 1956

Item 214 Subregulation 2(1)

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1500. This item amends subregulation 2(1) of the Prohibited Imports Regulations to insert a new definition for "ammunition equipment", which is defined to signpost the meaning given by subregulation 4F(4).

1501. This amendment enables the term to have the meaning as defined regardless of where the terms are referred to in the Prohibited Imports Regulations. To this effect, this amendment complements the amendments made by item 216 of Part 8 of Schedule 4 to the Combating Antisemitism, Hate and Extremism Bill 2026, when enacted, which give meaning to the new term.

Item 215 At the end of subregulation 3E(1)

1502. This item amends subregulation 3E(1) of the Prohibited Imports Regulations to insert a new paragraph 3E(1)(k) to cover ammunition equipment. This provides for a more streamlined requirements for the re-importation of articles that was exported for use overseas, for example in lawful shooting competitions.

Item 216 Subregulation 4F(4)

1503. This item amends subregulation 4F(4) of the Prohibited Imports Regulations to insert a new definition of "ammunition equipment", which means an item that is designed:

- to be worn on any part of the body; and
- for the specific purpose of allowing the wearer to readily access ammunition to increase the speed of reloading; and
- to hold 30 or more rounds of ammunition, other than ammunition mentioned in item 14A or 14B of Part 2 of Schedule 6.

1504. The note under the new definition clarifies to the reader that ammunition equipment does not include items that can carry ammunition but were not designed for that purpose. For example, an ordinary backpack would not be ammunition equipment.

1505. Ammunition equipment can present a community safety risk when used in conjunction with a firearm as they enable increased amounts of ammunition to be carried on a person and the speed of reloading. In light of this, the Commonwealth is imposing restrictions on imports of these items.

Item 217 Part 2 of Schedule 6 (after table item 23)

1506. This item amends the table under Part 2 of Schedule 6 to the Prohibited Imports Regulations to insert a new table item 23A. The table sets out the tests for importation of ammunition equipment , including:

- the official purposes test;
- the specified purposes test;
- the specified person test;
- the sports shooter test;

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- the international sports shooter test;
- the dealer test;
- the handgun test;
- the returned goods test.

1507. The purpose is to generally prohibit the importation of ammunition equipment for recreational uses and restrict to government, professional or occupational needs and sports competition.

Division 2—Application of amendments made by this Part

Customs (Prohibited Imports) Regulations 1956

Item 218 At the end of regulation 23

1508. This item amends regulation 23 of the Prohibited Imports Regulations to add new subregulation 23(5) that has the effect of clarifying the application of the amendments made by Part 8 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, when enacted.

1509. New subregulation 23(5) provides that amendments of the Prohibited Imports Regulations, made by Part 8 of Schedule 4 to the Combatting Antisemitism, Hate and Extremism Bill 2026, apply in relation to:

- any application for permission to import goods into Australia made at or after the commencement of that Part; and
- any documentation given at or after that commencement to facilitate the importation of goods into Australia.

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SCHEDULE 5 – TRANSITIONAL RULES

Item 1 Transitional rules

1510. Schedule 5 would allow for the Minister administering the *Australian Federal Police Act 1979*, or the Minister administering the *Administrative Review Tribunal Act 2024*, to, by legislative instrument, make rules prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act. The effect of this is to allow for a smooth transition to manage the shift from the old legislative framework to the new one. The transitional rules are broad in nature to allow flexibility in responding to practical issues that may arise during implementation. For example, transitional rules may clarify how pending applications, ongoing investigations or processes under previous legislation are to be treated under the proposed legislation.

1511. The Schedule also ensures subsection 12(2) of the Legislation Act 2003, retrospective application of legislative amendments, does not apply in relation to rules made under this item before the end of the period of 12 months starting on the day this item commences. Subsection 12(2) ordinarily prevents legislative instruments from applying retrospectively if doing so would disadvantage or impose liabilities on someone, however it is appropriate for the Bill to be excluded from this to ensure a smooth transition to the new proposed legislative framework. The 12-month period reflects the intention that these rules are temporary transitional rules.

1512. To avoid doubt, the transitional rules may also not create an offence for civil penalty, provide powers of arrest or detention, or entry, search or seizure, impose a tax, set an amount to be appropriate from the Consolidated Revenue Fund under an appropriation in this Act or directly amend the text of the Bill. This has been inserted to act as a safeguard to ensure that it is clear on the face of the legislation that the relevant Minister cannot create rules for such things.

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