PARLIAMENT OF AUSTRALIA
DEPARTMENT OF PARLIAMENTARY SERVICES

PARLIAMENTARY LIBRARY

Bills Digest | 16 January 2026

Exposure Draft Legislation: Combatting Antisemitism, Hate and Extremism Bill 2026

Bills Digest No. 34, 2025–26

Key points

- On 12 January 2026, the Prime Minister announced that the Parliament would be recalled to consider the Combatting Antisemitism, Hate and Extremism Bill 2026. While the Bill has yet to have been tabled in Parliament an Exposure Draft of the Bill was released on 13 January 2026. This Bills Digest has been prepared in relation to the Exposure Draft of the Bill (the Bill).
- The Bill aims to combat antisemitism, hate and extremism and strengthen gun laws in Australia and includes a number of significant amendments, such as:
  - introducing a range of new offences including an aggravated offence for religious, spiritual or other leaders who advocate or threaten violence; and a racial vilification offence that makes it a crime to promote or incite racial, national or ethnic hatred or disseminate ideas of superiority based on such factors
  - newly defining 'hate crime' in Commonwealth law as certain crimes targeting persons based on race or national or ethnic origin
  - providing a new framework to allow organisations to be listed in regulations as 'prohibited hate groups', and introducing a range of offences connected to hate groups
  - amending the reasonable person test for offences involving Nazi or prohibited symbols by requiring courts to consider their impact on a reasonable person from the targeted group
  - requiring courts to consider, when sentencing a person, whether a federal offence was motivated by racial, national, or ethnic hatred
  - amending customs regulations to prohibit the import and export of violent extremist material and prohibited hate symbols, and strengthening importation controls on firearms

Confidential, Impartial, Timely

ISSN 1328-8091

- enabling the Minister for Home Affairs to refuse to grant, or to cancel, a visa on the basis of hate motivated conduct and offences relating to the spread of hatred and extremism
- establishing a National Gun Buyback Scheme, with costs to be split between the Commonwealth and state/territory governments and
- enabling the use of Commonwealth intelligence for firearms licensing decisions.

- The Bill has been referred to the Parliamentary Joint Committee on Intelligence and Security which has commenced an urgent review into the Bill. Submissions to the Committee have been published on the Committee's website.

Contents

Commencement provisions: Sections 1–3 commence on Royal Assent. Schedules 1–3, Schedule 4 (Parts 1–6) and Schedule 5 commence the day after Royal Assent. Schedule 4 (Part 7) commences 28 days after Royal Assent. Schedule 4 (Part 8) commences 6 months after Royal Assent.

Links: The links to the draft Bill and draft Explanatory Memorandum can be found on the Attorney-General's Department website.

When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the Federal Register of Legislation website.

All hyperlinks in this Bills Digest are correct as of January 2026.

NOTE: This is a preliminary Bills Digest produced to assist early consideration of an exposure draft of the Combatting Antisemitism, Hate and Extremism Bill 2026. The Bill to be tabled in Parliament may vary from the Exposure Draft and consideration should be given to this when referring to this Bills Digest.

Purpose of the Bill

On 12 January 2026, the Prime Minister announced that the Parliament would be recalled to consider the Combatting Antisemitism, Hate and Extremism Bill 2026. While the Bill has yet to be tabled in Parliament an Exposure Draft of the Bill (the Bill) and accompanying Draft Explanatory Memorandum (Explanatory Memorandum) were published by the Attorney-General's Department on 13 January 2026. All references in this Bills Digest to the Bill or Explanatory Memorandum refer to these documents.

The Explanatory Memorandum advises that the purpose of the Bill is to amend a number of Commonwealth Acts to implement the Government's response to the terrorist attack targeting the Jewish community at Bondi Beach on 14 December 2025 and respond to the criminal law related recommendations of the Special Envoy to Combat Antisemitism.

The Bill provides for a number of significant amendments, including:

- introducing a range of new offences including an aggravated offence for religious, spiritual or other leaders who advocate or threaten violence; and a racial vilification offence that makes it a crime to promote or incite racial, national or ethnic hatred or disseminate ideas of superiority based on such factors
- newly defining 'hate crime' in Commonwealth law as certain crimes targeting persons based on race or national or ethnic origin
- providing a new framework to allow organisations to be listed in regulations as 'prohibited hate groups', and introducing a range of offences connected to hate groups
- amending the reasonable person test for offences involving public display of Nazi or prohibited symbols by requiring courts to consider the impact on a reasonable person from the targeted group
- requiring courts to consider, when sentencing a person, whether a federal offence was motivated by racial, national, or ethnic hatred
- amending customs regulations to prohibit the import and export of violent extremist material and prohibited hate symbols
- enabling the Minister for Home Affairs to refuse to grant, or to cancel a visa, on the basis of hate motivated conduct and offences relating to the spread of hatred and extremism
- providing for the establishment of a National Gun Buyback Scheme, with costs to be split between the Commonwealth and state/territory governments
- establishing a legislative basis for AusCheck, as the Commonwealth background checking authority, to facilitate background checks in relation to state and territory firearms licensing decisions
- enabling the use of Commonwealth intelligence for firearms licensing decisions
- strengthening importation controls on firearms and ammunition equipment, and preventing the importation of firearms by non-Australian citizens
- allowing the Minister for Home Affairs, or their delegate, to refuse permission to import a firearm or weapon, or related good, where the importation of that item poses a risk to the health, safety or security of the public or a sector of the public and

- introducing new Commonwealth offences that target material which provides instruction or otherwise facilitates manufacture or modification of firearms, explosive devices, and associated things.

Structure of the Bill

The Bill contains five schedules of amendments:

- **Schedule 1** contains amendments to criminal law relating to hate speech, racial vilification and radicalisation
- **Schedule 2** contains amendments to migration laws, particularly relating to visa refusals and cancellations
- **Schedule 3** contains customs amendments relating to import and export of violent extremist and hate material
- **Schedule 4** contains amendments to firearms-related legislation including the establishment of a national gun buy-back scheme and strengthening background checking arrangements and
- **Schedule 5** contains transitional provisions.

Background

On 14 December 2025 Australia was devastated by an horrific terrorist attack on a Hanukkah celebration at Bondi beach. The attack took the lives of 15 innocent people and injured many others.

On the day following the terrorist attack, the Opposition Leader, Sussan Ley, called on the Government to endorse the Plan to Combat Antisemitism released by the Special Envoy to Combat Antisemitism in Australia on 10 July 2025. The Coalition offered to support the immediate recall of federal Parliament 'if laws need to be passed'.

On the same day, the Prime Minister advised that the Government 'is prepared to take whatever action is necessary', which would include 'the need for tougher gun laws' and convened a meeting of the National Cabinet. At that meeting, First Ministers agreed to 'strengthen gun laws across the nation' and asked Police Ministers and Attorneys-General to develop options, including:

> Accelerating work on standing up the National Firearms Register;
>
> Allowing for additional use of criminal intelligence to underpin firearms licencing that can be used in administrative licencing regimes;
>
> Limiting the number of firearms to be held by any one individual;
>
> Limiting open-ended firearms licencing and the types of guns that are legal, including modifications; and
>
> A condition of a firearm license is holding Australian citizenship.

At that meeting the Federal Government undertook, as an immediate priority, to 'commence work on potential further Customs restrictions of firearms and other weapons type importations, including 3D printing, novel technology and firearms equipment that can hold large amounts of ammunition'.

On 18 December 2025, the Government issued a formal response to the Special Envoy's Plan to Combat Antisemitism, adopting the Plan. In addition to setting out the actions that had already been taken to address the Plan's recommendations (including 'legislat[ing] for hate speech, hate crimes, hate symbols and doxxing', the Government advised that it would develop a package of legislative reforms that would include:

1. Aggravated hate speech offence for preachers and leaders who promote violence.
2. Increased penalties for hate speech promoting violence.
3. Making hate an aggravating factor in sentencing crimes for online threats and harassment.
4. Developing a regime for listing organisations whose leaders engage in hate speech promoting violence or racial hatred.
5. Developing a narrow federal offence for serious vilification based on race and/or advocating racial supremacy.

The Government also advised that the Minister for Home Affairs would be given new powers to cancel or reject visas.

On 19 December 2025, the Government announced a National Gun Buyback scheme to purchase surplus, newly banned and illegal firearms.

On 21 December 2025, the Prime Minister announced a review to 'examine whether federal law enforcement and intelligence agencies have the right powers, structures, processes and sharing arrangements in place to keep Australians safe in the wake of the horrific antisemitic Bondi Beach terrorist attack'. The Independent Commonwealth Review into Australia's federal law enforcement and intelligence agencies, led by Dennis Richardson, will examine the following matters in relation to the Bondi terrorist attack:

- what relevant Commonwealth agencies knew about the alleged offenders before the attack, and when
- the interaction and information sharing between Commonwealth agencies, and between Commonwealth and state and territory agencies
- what judgements were made and actions taken by relevant agencies
- whether there were any additional measures that relevant Commonwealth agencies could have taken to prevent the terrorist attack
- whether relevant Commonwealth agencies were prevented from taking prohibitive actions by the current legislative framework and authorising environment
- what additional measures, if any, should be taken by relevant Commonwealth agencies to prevent similar attacks occurring in the future:
    - whether they have adequate legislative powers, the right systems, processes and procedures, and an appropriate authorising environment for information sharing with other federal and state and territory agencies
    - whether warrant and data access regimes and powers are adequate
    - whether any legislative amendments are required.

The Review is to be completed by the end of April 2026.

Following appeals from prominent Australians, on 22 December 2025 the Coalition called for a Commonwealth Royal Commission into the Bondi attack and antisemitism, releasing detailed proposed terms of reference. On the same day, four teal independents, Dr Monique Ryan, Kate Chaney, Dr Sophie Scamps and Zali Steggall formally called on the Prime Minister to announce a federal royal commission. The Prime Minister expressed support for the NSW Royal Commission and emphasised that the Richardson review will allow action to be taken quickly. The Prime Minister called for 'urgency and unity, not division and delay'.

On 8 January 2026, the Government announced the establishment of a Royal Commission on Antisemitism and Social Cohesion, with the former High Court Justice Virginia Bell to serve as Commissioner. The Letters Patent require the Commission to report by 14 December 2026.

On 12 January 2026, the Prime Minister advised that Parliament would be recalled on 19 and 20 January to deal with important national security legislation in the wake of the Bondi terrorist attack. The Bill was released on 13 January and referred to the Parliamentary Joint Committee on Intelligence and Security (PJCIS) which has commenced an urgent review into the Bill. Public hearings on the Bill were held on 13 and 14 January. At the time of writing, the PJCIS has received close to 100 submissions.

On 14 January 2026, the Prime Minister announced a National Day of Mourning on 22 January 2026 to 'remember the 15 innocent people whose lives and futures were so cruelly stolen from them that terrible evening'.

Policy position of non-government parties/independents

Opposition Leader Sussan Ley has described the Bill as 'unsalvageable', but advised that the Coalition 'will continue to scrutinise [it] carefully'. Media reports indicate that some Liberal Party MPs have raised concerns that the Bill's proposed amendments to hate speech laws may impact freedom of speech, with Andrew Hastie reportedly stating 'I have concerns about what this bill will do to freedom of conscience and religion, and I'm unlikely to support it'. Liberal Senator Alex Antic has advised that he will not support the Bill 'regardless of the Coalition's position'.

Nationals Senator Matt Canavan is reported to have expressed concern that 'legitimate criticism of migration policy or integration could easily be construed as racist, leading to prosecution' and has described the Bill as 'the greatest attack on free speech since Robert Menzies tried to ban the Australian Communist Party'.

The Greens have advised that they 'will not pass the Bill in its current form', but 'remain open to working with the Government on legislation that protects vulnerable communities and people based on principles of equal treatment, genuine protection and non-discrimination'.

On 16 January 2026, independents Nicolette Boele, Kate Chaney, Dr Monique Ryan, Dr Sophie Scamps, Allegra Spender and Zali Steggall called for the Parliament to work together to 'deliver concrete action'. In a joint media release, the MPs stated:

> We have a bill being introduced next week – it is imperfect, but as MPs we have a responsibility to work on this legislation together to get it right for all Australians.
>
> The Liberals and Nationals called for urgent action, now they must follow through. If there are differences within the Coalition, then at the very least they must give their MPs the opportunity for a conscience vote.
>
> The Greens have flagged their concerns about hate speech and gun laws, now they have the opportunity to help shape laws to tackle these issues.
>
> We urge all MPs to negotiate in good faith to deliver concrete action.
>
> We can't afford to wait any longer.

In her submission to the PJCIS, Independent Senator Fatima Payman stated that 'it is clear that swift action is required, but swift does not need to mean ill-considered' and along with other recommendations, suggested:

> … that the Senate and House of Representatives consider whether better outcomes would be achieved if the Bill were put through a more considered process of deliberation and scrutiny, rather than rushing it through during the two-day January sitting.

Stakeholder comments

At the time of writing, the PJCIS was still uploading submissions to its website, and it has not been possible in the time available to provide a comprehensive summary of stakeholder views on the Bill.

The Executive Council of Australian Jewry (ECAJ) welcomed the Bill, stating that it 'is a significant step in the right direction, but it still suffers some significant shortcomings which will limit its effectiveness'. In particular, the ECAJ identified 4 'serious shortcomings' with the vilification offence at **item 22** of **Schedule 1**, which are discussed below.

The Jewish Council of Australia considers the Bill to be 'dangerous' and 'a mess of legal inconsistencies'. It has urged the Government to 'undertake extensive consultation before moving forward'.

The Free Speech Union of Australia reportedly considers the Bill to be 'an unacceptable response to terrorism in a liberal democratic society'.

The Australian Federation of Islamic Councils (AFIC) has expressed 'serious concern' with the limited time for consultation on the Bill and advises that its preliminary review has raised 'several red flags'. AFIC has called on the Government to defer the legislation 'until a proper and inclusive consultation process is conducted'.

Concerns with the Bill have also been raised by the Australian Lawyers Alliance and the Jewish Council.

Key issues and provisions

Schedule 1: Amendments of legislation relating to the criminal law

Offences relating to preachers and leaders (Part 1)

Subdivision C in Division 80 of the *Criminal Code Act 1995* (the Criminal Code) includes offences for advocating or threatening force or violence against individuals or groups based on protected attributes. It also includes offences for advocating or threatening damage to property owned by protected persons or to places of worship. Offences criminalising the threatening of force or violence against groups or members of groups, and advocating damage to property were introduced into the Criminal Code in 2025.

Item 7 introduces a new aggravated offence into Subdivision C targeted at religious officials, spiritual leaders or other leaders who advocate or threaten force or violence against persons, in contravention of sections 80.2A–80.2BE of the Criminal Code. This means that offending behaviour by a religious, spiritual or other leader, where target groups are distinguished on the basis of any of the listed attributes, may enliven the new offence.

The terms 'spiritual leader', and particularly the term 'other leader', are broad and intended to capture persons who provide religious instruction or religious or secular pastoral care (**proposed subparagraph 80.2DA(1)(b)(ii)**). This new aggravated offence is justified on the basis that religious and spiritual leaders occupy significant positions of trust in society, and that 'exploiting this position of trust and authority warrants higher penalties' (Explanatory Memorandum, p. 104). The maximum penalty for the new aggravated offence is 10 years imprisonment, or 12 years imprisonment where the offending would threaten the peace, order and good government of the Commonwealth (**proposed subsections 80.2DA(1)–(2)**).

It will **not** be a defence to this offence to quote or otherwise reference a religious text. There is such a defence for the racial vilification offence, which is discussed further below.

Aggravated sentencing (Part 3)

Section 16A of the *Crimes Act 1914* lists matters which a court must consider when sentencing persons for federal offences. **Item 10** introduces a new general sentencing factor that a court must consider if relevant and known to the court. **Proposed paragraph 16A(2)(mb)** provides that a sentencing court must consider whether the offender's conduct was motivated by hatred of another person or group and, if so, whether that hatred was because of the person's belief that the target person or target group are distinguished by race, or national or ethnic origin. If present, these matters need to be considered as a reason for aggravating the seriousness of the criminal offending.

This new matter is to be considered in relation to sentencing for **any** federal offence where such consideration is relevant to the offender's case (except some offences already contained in the Criminal Code, which are listed in **proposed subsection 16A(2AAB)**, as these offences already contain hate motivation as an element for the court to consider: Explanatory Memorandum, p. 109).

Prohibited hate groups (Part 4)

Item 13 introduces **new Part 5.3B** into the Criminal Code. This significant new Part regulates groups which will be deemed to be 'prohibited hate groups'.

Defining hate crime

Currently the term 'hate crime' is not used in Commonwealth law, despite it often being employed as shorthand to refer to a wide variety of crimes targeting particular groups or persons based on protected attributes. **Proposed section 114A.3** will introduce a definition of hate crime into the Criminal Code, which will mean any of the following three things:

1. prescribed offences, as listed in **proposed paragraph 114A.3(1)(a)**, where the target group is distinguished by race or national or ethnic origin (the offences are advocating or threatening force or violence against individuals or groups based on protected attributes (sections 80.2A to 80.2BB)); and advocating or threatening damage to property owned by protected persons or to places of worship (sections 80.2BC to 80.2BE))
2. an offence of publicly displaying prohibited symbols or giving Nazi salute (sections 80.2H and 80.2HA of the Criminal Code) and
3. where an offender targets a person because of the offender's belief that the targeted person is distinguished on the grounds of race or national or ethnic origin in tandem with conduct that:
   - causes serious harm to a person
   - endangers a person's life
   - causes a person's death
   - creates a serious risk to the health or safety of a section of the public or
   - causes serious damage to property.

The above definition of hate crime does not encapsulate attributes beyond race, national or ethnic origin. Newly defining hate crimes as only those crimes committed on the bases of race, national or ethnic origin arguably diminishes the offending of other crimes where persons are distinguished on other bases, such as sexual orientation, religion, gender identity or disability; attributes that are all included (alongside others) in existing offences of threatening or advocating violence towards a person in Subdivision C of Division 80 of the Criminal Code.

Previous conduct that would qualify as a hate crime under this Bill will be retrospectively treated as such.

Listing organisations as 'prohibited hate groups'

A prohibited hate group will be an organisation specified in regulations for the purposes of the definition. The Governor-General, on advice from the AFP Minister (currently the Minister for Home Affairs) and with agreement from the Attorney-General, is authorised to make regulations specifying organisations as prohibited hate groups. However, before the Governor-General can make such regulations, the AFP Minister must be satisfied on reasonable grounds that:

- the organisation has
  - engaged in, prepared, planned or assisted with the engagement in, conduct constituting a hate crime or
  - advocated, in Australia or abroad, engaging in conduct constituting a hate crime

  and
- specifying the organisation as a prohibited hate group is reasonably necessary to prevent identified harm as outlined in **proposed paragraph 114A.1(a)**.

The harms identified in **proposed paragraph 114A.1(a)**, which sets out the objects of new Part 5.3B, are 'social, economic, psychological and physical harm'. These categories are strikingly broad, given the significant implications of a group being designated as a prohibited hate group. Additionally, because the new legal definition of 'hate crime' is tied to race or national or ethnic origin, hate groups can only be those who conduct hate crimes based on race or national or ethnic origin.

In the steps leading to the designation of groups as prohibited hate groups, other important aspects include that:

- reference to conduct constituting a hate crime includes conduct that occurred before these provisions commence: **proposed subsection 114A.4(2)**
- a person does not have to be convicted of a hate crime for the AFP Minister to be satisfied that an organisation engaged in such conduct: **proposed subsection 114A.4(4)** and
- the AFP Minister is not required to observe any requirements of procedural fairness in deciding whether they are satisfied of this provision: **proposed subsection 114A.4(5)**.

As Professor Anne Twomey has stated

> Under the proposed laws, no one needs to have been convicted of a hate crime for the minister to be satisfied that an organisation has engaged in conduct constituting a hate crime and there is no requirement for the minister to observe procedural fairness.

Proposed section 114A.5 provides that the Director-General of Security (the head of ASIO) may provide the AFP Minister with advice recommending the Minister consider whether an organisation should be specified as a prohibited hate group. The receipt of such advice from the Director-General is necessary before the AFP Minister may consider recommending that an organisation be listed as a hate group (**proposed subsection 114A.5(2)**)

Before the Director-General does this, they must be satisfied that the organisation has:

- engaged in activities which are likely to increase the risk of ***politically motivated violence*** or the ***promotion of communal violence*** and
- advocated for or engaged in politically motivated violence or the promotion of communal violence or engaged in activities that indicate a risk of engaging in politically motivated violence or promotion of communal violence.

Under the Bill, the terms ***politically motivated violence*** and ***promotion of communal violence*** adopt the definitions in the *Australian Security Intelligence Organisation Act 1979*, which extend beyond attributes of race, national or ethnic origin. For example, ***promotion of communal violence*** encompasses activities that promote violence between groups in the

Australian community endangering the peace, order or good government of the Commonwealth. These groups are not limited to racial, national or ethnic categories.

Although the factors that the Director-General is required to be satisfied of under **proposed subsection 114A.5(1)** could therefore apparently be met in relation to organisations that have advocated for or engaged in activities that are not focussed on the race, national or ethnic origin of their targets (for example, that are based on the political opinion or sexual orientation of their targets), such groups would not be able to be listed as prohibited hate groups. This is because the Minister must reasonably believe that the organisation has engaged in or advocated a ***hate crime*** (which, as discussed above, is restricted to offences concerned with race, national or ethnic origin). Consequently, the prerequisite for listing under **proposed paragraph 114A.4(1)(a)** would not be met.

The Leader of the Opposition would also be briefed in relation to a proposal to specify a hate group (**proposed paragraph 114A.6(b)**). There will also be the ability for the AFP Minister, through legislative instrument, to amend the regulations if the name of a hate group changes, or to refer to any alias it is also known by (**proposed subsection 114A.7(2)**). Additionally, the AFP Minister must make a declaration to de-list a group if the Minister ceases to be satisfied that it is reasonably necessary for the organisation to be listed to prevent harm (**proposed section 114A.8**). The PJCIS will be able to review the designation of hate groups and changes to the names of listed groups (**proposed section 114A.9**).

Professor Twomey concludes that consideration should be given to the necessity of the hate group prohibition provisions:

> Whether the high court would today take as robust a view as it has in the past to laws banning organisations and whether it would uphold its validity remains to be seen. But history suggests that such laws have been neither wise nor necessary, and that one should think very carefully before putting in place laws which have the potential to be abused in the future.

Offences relating to hate groups

Once a group is designated as a prohibited hate group, a range of new offences are activated (collectively referred to below as 'hate group offences'). The maximum penalties for the offences associated with prohibited hate groups range from 7 to 15 years imprisonment, with higher penalty offences requiring that the offender know that the organisation is a prohibited hate group. It will be an offence to:

- direct the activities of a prohibited hate group: **proposed section 114B.1**
- be a member of a prohibited hate group: **proposed section 114B.2**
- recruit a person to join or participate in the activities of a prohibited hate group: **proposed section 114B.3**
- provide training to or receive training from (or train with) a prohibited hate group: **proposed section 114B.4**
- receive funds from, make funds available to or collect funds for a prohibited hate group: **proposed section 114B.5** and
- provide support or resources to a prohibited hate group: **proposed section 114B.6**.

Consequential amendments to other legislation

Notable consequential amendments to other legislation, relating to prohibited hate groups, include:

- amending the definition of ***national security offence*** in section 3 of the *Australian Citizenship Act 2007* (Citizenship Act), meaning that a conviction for a hate crime offence under Part 5.3B of the Criminal Code would be grounds for the Minister not to approve a person becoming an Australian citizen: **item 14**
- specifying that a regulation made for the purpose of defining a group as a prohibited hate group is not subject to sunsetting: **item 17**
- authorising law enforcement officers to apply for an emergency authorisation for the use of a surveillance device or to access data, under the *Surveillance Devices Act 2004*, when they are investigating hate group offences and reasonably suspect that it is not practicable in the circumstances to apply for a warrant, to prevent the loss of evidence in the investigation: **item 18** and
- allowing agencies to apply for a warrant under the *Telecommunications (Interception and Access) Act 1979* for the purposes of investigating hate group offences, if it is likely that information obtained would assist in connection with the investigation: **item 19**.

Racial vilification offence (Part 5)

Currently under Commonwealth law, there is no racial vilification offence. **Item 22** of Schedule 1 introduces a new offence (**proposed section 80.2BF**) into Subdivision C of Division 80 of the Criminal Code, which makes it an offence to publicly promote or incite racial hatred. Under this new provision, it is an offence to:

- engage in conduct in a public place (which is broadly defined to include speaking, writing, graffiti, broadcasting and communicating through social media, wearing clothing, displaying a flag, or distributing material) where the offender engages in such conduct intending to:
  - promote or incite hatred or
  - disseminate ideas of superiority over or hatred of another person or group

  because of the race, colour or national or ethnic origin of the targeted person or group

  and

  – the conduct would, in all 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.

The terms race, colour, national and ethnic origin, as used in this provision, have the same meaning as in the *Racial Discrimination Act 1975*. The maximum penalty for this public promotion or incitement of racial hatred is imprisonment for 5 years.

A defence will be available if the conduct consists of directly quoting from, or otherwise referencing, a religious text for the purpose of religious teaching or discussion (**proposed subsection 80.2BF(4)**). The new offence is subject to review after 2 years of operation, with the review report to be tabled in Parliament (**proposed subsections 80.2BF(5)–(6)**).

Commentary on the racial vilification offence

The ECAJ welcomed the new vilification offence of the Criminal Code, but identified what it considered to be 4 'serious shortcomings' in its drafting, including that the offence should not be restricted to race, colour or national or ethnic origin, but should also apply to 'promoting hatred on the basis of other inherent attributes such as gender identity, sexual orientation, age or disability' as 'people who are targeted for hatred on the basis of these other attributes are equally entitled to protection'.

The ECAJ also considers that exemption relating to religious teaching or discussion is inappropriate:

> The entire concept of a religious exemption for racial hatred is a relic of outdated thinking. None of the world's recognised religions promotes racial hatred knowingly and deliberately, and to the extent that any religion were to do so, it would be thoroughly shameful. Invoking religion as an excuse to dehumanise and mistreat others simply on the basis of who they are, must surely be a thing of the past. Religions are at their best when they promote love, understanding and mutual respect, consistent with their teachings about the sanctity of human life and the inviolability of human dignity.

Reflecting these concerns, Peter Wertheim, co-chief executive of the ECAJ, advised the PJCIS inquiry into the Bill on 14 January 2026 that the exemption was unnecessary, 'totally misconceived and outdated'. Mr Wertheim expressed concern that the exemption would prevent successful prosecutions, stating that in the circumstances that led to the successful civil action under section 18C of the *Racial Discrimination Act 1975* by the ECAJ against an Islamic preacher, Wissam Haddad, the exemption could result in an acquittal, given that the defendant's lawyers in that case had argued that Mr Haddad's 'speeches were derived in substance from religious texts including the Koran' and 'were delivered in the context of religious instruction and based on scriptural references'. Liberal MP Ben Small, reportedly agreed with this concern, saying that the Bill 'might allow Islamic extremists to keep preaching hate at the same time as making it harder to criticise extremism'.

Section 93ZAA of the *Crimes Act 1900* (NSW) criminalises publicly inciting hatred on the ground of race and provides that the offence does not apply 'to an act that consists only of directly quoting from or otherwise referencing a religious text for the purpose of religious teaching or discussion'. The provision commenced in August 2025 and no prosecutions under the section could be identified when preparing this Digest.

The Race Discrimination Commissioner, Giridharan Sivaraman, advised the PJCIS that the Australian Human Rights Commission (AHRC) had not yet come to a final view on the proposed exemption. Mr Sivaraman noted that the phrase 'religious text' was unclear but that the defence appeared 'to be "narrow in scope" and an attempt to balance the right to religious freedom and practice with the right to be free from intimidation, harassment or violence'.

Reports suggest that the exemption has been included as 'certain translations of religious texts may otherwise have been deemed hate speech'. The AGD advised the PJCIS that it was a 'very narrow defence':

> The defence purely applies to a simple direct quote from a religious text for the particular purpose of religious teaching or discussion. If anyone was quoting for other purposes—the incitement of hatred, and their surrounding conduct indicated that—the defence wouldn't be available (p. 10).

On the other hand, the Bill has also been criticised as potentially impeding religious freedom and freedom of expression. AFIC has also identified the failure to include religion as a

protected attribute in this offence as problematic, given the 'documented and rising threat of Islamophobia'.

Professor Anne Twomey has expressed concern with the proposed incitement offence, in particular, the inclusion of *promoting* racial hatred. Professor Twomey considers this to be problematic from a constitutional perspective, as it may not be supported by the external affairs power and could potentially infringe the implied freedom of political communication. Professor Twomey advises:

> The most contentious area is where people communicate publicly, such as on social media or in public demonstrations, about acts of violence, terrorism, war crimes or atrocities that have been perpetrated by people of a particular race, national or ethnic origin. Any communication of what happened, even if accurate, is likely to promote or incite hatred against that group, causing them fear for their safety.

Professor Twomey notes that the Explanatory Memorandum to the Bill states that the intention to promote or incite racial hatred, which is an element of the offence, extends to where the person does not personally want such hatred to occur but 'is aware that will occur in the ordinary course of events' (p. 137 of the EM). Professor Twomey notes that 'it is no defence that the statement is true'.

Anglican bishop of South Sydney and Freedom for Faith chair Michael Stead expressed concern that the new offence 'set[s] the bar too low'.

Aggravated grooming offences (Part 6)

The Bill introduces two new aggravated offences, which will apply in circumstances where an offender commits a prescribed offence, in circumstances that may involve a person who is under 18 years old.

Item 33 inserts **proposed section 80.2DB** into the Criminal Code. It sets out an aggravated offence that will apply where an adult offender commits an offence against sections 80.2A, 80.2B, 80.2BC or 80.2BE by advocating for one or more persons to use force or violence or cause damage, and is reckless as to whether any of those persons is under 18 years old. Whether or not any of the persons are actually less than 18 years old is immaterial.

Recklessness is defined at section 5.4 of the Criminal Code, which provides that a person is reckless with respect to a circumstance if they are aware of a substantial risk that the circumstance exists or will exist, and having regard to the circumstances, it is unjustifiable to take the risk.

The maximum penalty for the aggravated offence is 10 years imprisonment, or 12 years imprisonment where the offending would threaten the peace, order and good government of the Commonwealth. The maximum penalties for the underlying offences are increased by **items 25** to **32**, from 5 years to 7 years imprisonment for the base offences, and from 7 years to 10 years imprisonment where the offending would threaten the peace, order and good government of the Commonwealth.

Item 35 inserts **proposed section 474.45BA** into the Criminal Code. It sets out an aggravated offence that will apply where an adult offender commits an offence against subsection 474.45B(1) (using a carriage service for violent extremist material) by either:

- transmitting, making available, publishing or distributing, advertising or promoting material or an electronic link to an individual or individuals; or
- soliciting material or an electronic link from an individual or individuals and

is reckless as to whether any of those individuals is under 18 years old. Whether or not any of the individuals are actually less than 18 years old is immaterial.

The maximum penalty for the aggravated offence is 7 years imprisonment. The maximum penalty for the underlying offence is 5 years imprisonment.

Hate symbols (Part 7)

Offences criminalising the publicly display of, and trading in, prohibited symbols and giving the Nazi salute were introduced in 2023 into Subdivision CA of the Criminal Code in response to a rise of Neo-Nazi activities in Australia.

Section 80.2HA of the Criminal Code makes it an offence to publicly display prohibited terrorist organisation symbols. Section 80.2JA sets out an offence for trading in prohibited terrorist organisation symbols. These provisions are amended by **items 48** and **49** to remove the fault element of knowledge and replace it with the fault element of recklessness, which is a lower threshold. The provisions are further amended by **items 54** to **58** to remove the reference to 'terrorist', so that the offences will apply to prohibited organisation symbols more broadly.

Changes through **items 50–52** will amend the definition of prohibited symbol, contained in existing section 80.2E. This is to reflect the prohibited hate group provisions discussed above, and to clarify that symbols used to identify both terrorist organisations and prohibited hate groups are prohibited symbols.

Current section 80.2K allows a police officer to direct a person to cause a prohibited symbol to cease being displayed in a public place. **Item 66** amends paragraph 80.2K(1)(a) to also allow a police officer to direct a person to cause a prohibited symbol to cease to be displayed online.

Item 68 introduces a new police power to seize things displaying prohibited symbols in public. As set out above, police currently have power to direct a person to cease to display prohibited symbols in public. **Proposed section 80.2N** would allow police to seize the prohibited symbols immediately, for the purpose of preventing the commission or continuation of an offence under section 80.2H or 80.2HA, in circumstances where the officer has a reasonable suspicion that the public display:

- involves dissemination of ideas based on racial superiority or racial hatred, or could incite another person to offend, insult, humiliate or intimidate a person or a group of persons because of their race (subsection 80.2K(2))
- involves advocacy of hatred of a group of persons, or a member of a group, distinguished by race, religion or nationality, or constitutes incitement to offend, insult, humiliate, intimidate or use force or violence against such a group or member (subsection 80.2K(3))
- 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 (subsection 80.2K(6)).

In seizing items, police officers can use such force or assistance as is considered reasonably necessary (**proposed paragraph 80.2N(3)(a)**).

Amending the reasonable person test in certain parts of Subdivision CA, Division 80

Currently, the offences in subsections 80.2H(3)–(4) (relating to the public display of prohibited Nazi symbols or giving a Nazi salute), and subsections 80.2HA(3)–(4) (regarding public display of prohibited organisation symbols) include a 'reasonable person' test. In *Monis v The Queen* [2013] HCA 4, Chief Justice French examined the use of the test in a provision of the Criminal Code that required that reasonable persons would regard a use of a postal service as offensive, stating:

> … the construct [of the reasonable person test] is intended to remind the judge or the jury of the need to view the circumstances of allegedly offensive conduct through objective eyes and to put to one side subjective reactions which may be related to specific individual attitudes or sensitivities [44].

Items 61 and **63** amend sections 80.2H and section 80.2HA to require that consideration be given to the perspectives of a reasonable person *who is a member of the group targeted*. The revised test is designed to direct the court to consider the lived experiences, perspectives and characteristics of persons distinguished by attributes including race, colour, national or ethnic origin (Explanatory Memorandum, pp. 164, 166).

Increased penalties

The Bill increases penalties for a range of existing offences including:

- offences relating to threatening or advocating force or violence against people or property (**items 1–6**, Schedule 1) and
- using a postal service to menace, harass or cause offence (section 471.12, Criminal Code), raising the maximum penalty from 2 years to 5 years (**item 8**, Schedule 1).

Schedule 2: Migration amendments

Changes to the meaning of 'character concern' (Part 1)

Section 5C of the *Migration Act 1958* provides for the meaning of 'character concern' and sets out the circumstances in which a non-citizen will be of character concern for the purposes of the Migration Act. The definition is relevant for the purposes of facilitating the use of data matching and biometric information to help the government identify people who are of character concern (for example, see section 336E of the Migration Act).

Currently a person is of 'character concern' if (among other things) in the Minister's opinion, in the event the person were allowed to enter or to remain in Australia, there is a risk that the person would:

- engage in criminal conduct in Australia
- harass, molest, intimidate or stalk another person in Australia
- vilify a segment of the Australian community
- incite discord or in the Australian community or 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.

Item 3 of Schedule 2 replaces the word 'would' with 'might' which is a significantly lower threshold that the Minister must be satisfied of.

Item 5 inserts **proposed subsections 5C(1A)**, **(1B)** and **(1C)** to provide that a person will be of 'character concern' where:

- the person is, or was, a member of an organisation that was, at any time of the person's membership, a terrorist organisation, state sponsor of terrorism, or prohibited hate group
- the person is, or was, associated with (where that association has provided support to) an organisation that was, at any time of the 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, whether or not that person, or another person, has been convicted of an offence constituted by the conduct or
- 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. Antisemitic statements are specifically provided as an example of such a statement.

The terms 'hate crime', 'member', 'prohibited hate group', 'state sponsor of terrorism', and 'terrorist organisation' have the same meaning as the relevant definitions in the Criminal Code. The term 'association' is defined broadly to provide that a person has an association with an organisation if the person meets or communicates with the organisation (including a single meeting or communication). It is also irrelevant whether a person's membership of or association with the organisation is continuing or has concluded.

Expansion of the Minister's power to refuse or cancel a temporary safe haven visa (Part 1)

Temporary safe haven visas are provided for in section 37A of the *Migration Act*. The only subclass is the 449 Humanitarian Stay (Temporary) visa, a short-term visa which provides a pathway to the subclass 786 Temporary (Humanitarian Concern) visa. This pathway has recently been used for people fleeing the situations in Afghanistan and Ukraine, and is currently in place for Palestinians and Israelis in Australia who are affected by the Hamas-Israel conflict.

Section 500A of the Migration Act allows the Minister to personally refuse or cancel a temporary safe haven visa where certain circumstances apply. As with the changes to section 5C discussed above, the Bill will amend the current provisions which allow the Minister to refuse or cancel a safe haven visa where the Minister is of the opinion that certain conduct would occur if the person was allowed to enter/remain in Australia (paragraph 500A(1)(c)) to replace the word 'would' with 'might', which is a significantly lower threshold.

The Minister will also have the power to refuse to grant to a person a temporary safe haven visa, or cancel a person's temporary safe haven visa if, in the Minister's opinion:

- the person is, or was, a member of an organisation that was, at any time of the person's membership, a terrorist organisation, state sponsor of terrorism, or prohibited hate group
- the person is, or was, associated with (where that association has provided support to) an organisation that was, at any time of the 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', whether or not that person, or another person, has been convicted of an offence constituted by the conduct or
- 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. Antisemitic statements are specifically provided as an example of such a statement.

Changes to the character test (Part 1)

Section 501 of the Migration Act applies a 'character test' to all non-citizens holding or applying for an Australian visa.[1] Under this provision, if the Minister for Home Affairs (the Minister) or a delegate is not satisfied that a non-citizen passes the 'character test' they may—and in some cases must—cancel or refuse to grant a visa to the person.[2]

Again, the Bill will amend the current provisions which allow the Minister to cancel a person's visa where they reasonably suspect certain conduct would occur if the person was allowed to enter/remain in Australia (paragraph 501(6)(d)) to replace the word 'would' with 'might', which is a significantly lower threshold.

The Bill will amend section 501 to provide additional character grounds which will enable the Minister for Home Affairs to refuse to grant or to cancel a visa where the following circumstances apply:

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

1. For further information on the operation of section 501, see Leah Ferris, 'Migration Amendment (Aggregate Sentences) Bill 2023', *Bills Digest*, 57, 2022-23, (Canberra: Parliamentary Library 2023).
2. *Migration Act 1958*, subsections 501(1), (2), (3A). Additionally, under subsection 501(3), the Minister (but not a delegate) may refuse or cancel a visa without affording the person natural justice (such as notice of the intention to cancel or refuse the visa) if they 'reasonably suspect' the person does not pass the character test and is satisfied the refusal or cancellation is in the national interest.

- the person has been or is involved in conduct constituting a 'hate crime', whether or not that person, or another person, has been convicted of an offence constituted by the conduct or
- 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. Antisemitic statements are specifically provided as an example of such a statement.

Changes to the Migration Regulations 1994 (Part 2)

Schedule 2 to the Bill will also amend Schedule 5 to the Migration Regulations 1994 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.

Currently Special Return Criterion 5001 only applies to a person who has been the subject of a deportation order or has had their visa cancelled. This amendment has the effect that a person refused a visa under sections 501, 501A, or 501B is also permanently excluded from being granted a visa except where certain circumstances apply.

Schedule 3: Customs amendments

Part 1 of Schedule 3 makes amendments to regulations made under the *Customs Act 1901* to prohibit the import or export of goods that are or contain violent extremist material or prohibited hate symbols.

Regulation 3 of the Customs (Prohibited Exports) Regulations 1958 (Prohibited Exports Regulations) deals with export control of objectionable goods. Regulation 4A of the Customs (Prohibited Imports) Regulations 1956 (Prohibited Imports Regulations) deals with import controls of objectionable goods. Listed objectionable goods are prohibited to be imported or exported unless Ministerial permission is received.

Item 1 inserts **proposed subregulation 3(2AB)** into the Prohibited Exports Regulations and **item 3** inserts **proposed subregulation 4A(1AB)** into the Prohibited Imports Regulations to clarify that both regulations apply to violent extremist material and prohibited symbols (both of which are defined in the Criminal Code) and goods containing either of these (such as flags, computers and mobile phones).

As outlined in the Explanatory Memorandum (pp. 185, 186), prior to this amendment the export and import control options to prohibit these goods 'are limited in their scope.' Australian Border Force officers will now be able to seize these goods, at the point of both export and import, as they will be classified as objectionable goods. These amendments are not retrospective (**items 8–10**).

Items 5 and **7** repeal the definition of ***commercial quantity of objectionable goods*** from the Customs Regulation 2015. **Item 6** amends the requirements for objectionable goods to be

classified as tier 1 goods. It is an offence under both the Customs Act (section 233BAA) and the Customs Regulation to import or export tier 1 goods without approval, with a maximum penalty of 5 years imprisonment or 1,000 penalty units or both. The commercial quantity threshold has been removed by these amendments, meaning that any quantity of objectionable goods (including violent extremist material and prohibited symbols) imported or exported without permission will violate the Customs Act and Customs Regulation.

Schedule 4: Firearm amendments

Background to firearm regulation in Australia

In Australia, responsibility for firearm regulation is shared between the Commonwealth and state and territory governments.

After the events at Port Arthur, in 1996 the Australasian Police Ministers' Council adopted the National Agreement on Firearms, which consisted of 10 resolutions forming a nationwide plan for the regulation of firearms.[3] This included a gun buyback scheme (discussed further below). The NFA also contained a resolution establishing a 12-month national amnesty period and compensation program, along with a public information campaign.

In February 2017, the Law, Crime and Community Safety Council agreed to an updated 2017 National Firearms Agreement (NFA) which amalgamated the 1996 National Firearms Agreement and 2002 National Handgun Agreement into a single point of reference for firearms regulation in Australia. The NFA outlines the categorisation of firearms that correspond to the different licences available for owners of firearms for different purposes. A Permanent National Firearms Amnesty, which began on 1 July 2021, allows for the surrender of unregistered firearms without penalty.

On 1 July 2024, the National Firearms Register (NFR) Implementation Program commenced and is expected to be operational by mid-2028. This followed National Cabinet's agreement on 6 December 2023 to implement a NFR which was an outstanding reform from the 1996 Port Arthur response.

National gun buyback (Part 1)

The purpose of Part 1 of Schedule 4 of the Bill is to implement a national gun buyback scheme in response to the antisemitic terrorist attack at Bondi Beach on 14 December 2025. As noted in the Attorney-General's Department's submission to the PJCIS inquiry into the Bill, '[t]here are now more than four million registered firearms in Australia, which is likely more than at the time of the Port Arthur massacre, nearly 30 years ago.' (p. 16)

Australia has previously implemented a gun buyback program. Following the events in Port Athur, the federal government passed the *National Firearms Program Implementation Act 1996* and the *Medicare Levy Amendment Act 1996*, which established the national firearms buyback program funded by a one-off 0.2 per cent increase in the Medicare levy. The Commonwealth funded both the administration of the scheme (including paying money to

3. For further background on firearm reforms in Australia, see Legal and Constitutional Affairs References Committee, *Ability of Australian law enforcement authorities to eliminate gun-related violence in the community*, (Canberra: The Senate, 2015), 3-11.

the states/territories to cover the costs of establishing, promoting and operating the scheme) and the compensation payments made in relation to prohibited weapons.[4] According to the Australian National Audit Office (ANAO), the gun buy-back scheme started in most states on 1 October 1996 and ended on 30 September 1997.[5] It resulted in the surrender of about 640,000 prohibited firearms nationwide.[6]

The Bill will provide the legislative framework for a new gun buyback scheme which will provide compensation for firearm owners for surplus and newly restricted firearms (p. 17). According to the Explanatory Memorandum:

> 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. (p. 193)

Subclause 3(2) of Schedule 4 to the Bill provides the Minister administering the *Australian Federal Police Act 1979* (AFP Minister) with the power to approve a compensation scheme set up by a state/territory to support the national firearms program. The national firearms program refers to the commitments made by National Cabinet on 15 December 2025 relating to firearms licencing, reducing the number of firearms in the community or any other matter connected with firearms, or any other measure determined by the AFP Minister. Any approval of a compensation scheme will be done by notifiable instrument, which requires the instrument to be registered on the Federal Register of Legislation though the instrument is not subject to disallowance or sunsetting.

According to the Government:

> The instrument would prescribe the compensation schedule, timeframe, data collection requirements, role of the Australian Federal Police (AFP) in destruction, and the form in which reimbursement requests are to be made. Details of the Buy Back scheme are being settled in conjunction with State and territories and reflect other firearm amendments in the Bill. (p. 4, Factsheet: Combatting Antisemitism, Hate and Extremism Bill 2026 – Summary of Measures)

The legislation allows for compensation schemes to operate from the period beginning on 1 January 2026 and ending on 31 December 2027, though the AFP Minister has the power to provide for a different period.

Subclause 4(1) provides that the Minister administering the *Federal Financial Relations Act 2009* (that is, the Treasurer or another Treasury Minister) must determine under that Act that an amount is to be paid to a state/territory as a grant of financial assistance to support the implementation by the state/territory of the national gun buyback scheme. The *Federation Reform Fund Act 2008* provides that 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. Under subsection 7(2) of the Federation Reform Fund 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. **Subclause 4(2)** provides that the Commonwealth will

4. Australian National Audit Office (ANAO), *The Gun Buy-Back Scheme*, (Canberra: ANAO, 1997), 6-7.
5. ANAO, *The Gun Buy-Back Scheme*, 6.
6. ANAO, *The Gun Buy-Back Scheme*, 6.

also be able to provide grants of assistance to the states/territories for other aspects of the firearms program (for example, the costs of storage and transportation before destruction).

The Government has stated that the total indicative cost of the scheme is still to be determined, but it is likely to be significant (p. 21) and the costs will be split 50:50 between the Commonwealth and the states/territories (p. 17). On 12 January 2025, the Northern Territory Chief Minister Lia Finocchiaro said her government would not support the buyback if the territory had to partly pay for it. Tasmanian Police Minister Felix Ellis has also publicly raised concerns about the shared funding arrangements, stating '[O]ur estimates show a buy-back could cost Tasmanians $20 million, not including the administration and enforcement costs'. The Queensland Government has also recently announced that it does not support the shared costs arrangements.

The Bill also includes specific provisions which will allow the Government to appropriate funds in the Consolidated Revenue Fund, provided there is a relevant constitutional head of power. This will allow for payments in connection to the national firearms program to be made to entities other than the states/territories.

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.

Firearms background checks (Part 2)

Changes to Auscheck's functions to enable a firearms background checking scheme

Part 2 of Schedule 4 amends the *AusCheck Act 2007* to enable the establishment of a background checking scheme in relation to firearms licence applicants and holders.

AusCheck is currently responsible for providing background checks for critical infrastructure workers in Australia, along with other functions. The amendments in the Bill will expand its functions to include background checks in relation to:

- a decision under a law of a state/territory about whether to issue a firearms licence to an individual or otherwise relating to the issue of such a licence (including in relation to conditions)
- a decision about whether to renew, revoke, vary or suspend a firearms licence
- an application by a law enforcement agency or a national security agency in relation to an individual who holds a firearm licence (**proposed paragraph 8(1)(f)**).

A firearms background check of an individual may only take into account one or more of the following:

- an Australian Security Intelligence Organisation (ASIO) security assessment (see further below)
- an Australian Criminal Intelligence Commission (ACIC) criminal intelligence assessment (see further below) and
- the citizenship status of the individual (**proposed subsection 8(4A)**).

Proposed section 10B sets out the matters that may be prescribed in the AusCheck Regulations for the firearms background checking scheme. **Proposed subsection 10B(3)** provides that where a person has applied for a firearms licence and was advised that a firearms background check was a precondition to the issuing of the licence, then they are deemed to have consented to the background check. An individual will also be taken to have consented to another person making an application for a firearms background check of the individual if prior to the commencement of these provisions the individual held a firearm's licence (**item 18** of Schedule 4). This will constitute an authorisation for the purposes of other laws, including Australian Privacy Principle 6 of the *Privacy Act 1988*. Importantly, the individual will not necessarily be made aware that an application has been made which relates to them.

The Government has argued that 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. (p. 202, Explanatory Memorandum)

The Bill also proposes to amend the *Australian Security Intelligence Organisation Act 1979* (ASIO Act) to remove restrictions which would prevent AusCheck or a firearm licensing authority from taking any action in relation to a firearms licensing decision on the basis of communications from ASIO that are not a security assessment or equivalent (**Item 19**, Schedule 4).

Changes to the ACIC's criminal intelligence assessment framework

Part 2 of Schedule 4 would amend the *Australian Crime Commission Act 2002* (ACC Act) to repeal Division 2A of Part II (which deals with criminal intelligence assessments) and introduce a revised criminal intelligence assessment framework under new Part III.

A criminal intelligence assessment is an assessment conducted by the ACIC to determine if intelligence held by the agency suggests a person may commit a serious and organised crime or assist another person to commit a serious and organised crime. As explained in the Draft Explanatory Memorandum:

> 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 order to prevent the advancement of serious and organised crime. (p. 207)

Upon completing its assessment, the ACIC may issue an adverse criminal intelligence assessment, which means a criminal intelligence assessment in respect of a person 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 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 (for example, being able to hold an aviation or maritime security identification card).

The ACIC is not required to make an adverse criminal intelligence, or disclose such an assessment to another Commonwealth agency, where it would prejudice law enforcement or intelligence interests.

Currently the ACIC conducts criminal intelligence assessments where required under the *Aviation Transport Security Act 2004* or the *Maritime Transport and Offshore Facilities Security Act 2003* (or regulations made under either of these Acts). **Proposed section 54C** will also enable the ACIC to conduct criminal intelligence assessments for the new AusCheck firearms background checking scheme (discussed above). A criminal intelligence assessment may be used by a state or territory to inform 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 (**proposed subsection 54A(1)**).

Generally, where an adverse security assessment is made against them, a person will receive written notice (noting the Minister currently has and will continue to have the broad power to issue a certificate withholding notice from being given). However, **proposed subsections 54E(3) and (4)** provides that this requirement does not apply to assessments in relation to firearms licensing decisions except where otherwise prescribed by the regulations. Further, merits review in the Administrative Review Tribunal (ART) is not available in relation to such assessments except where otherwise prescribed by the regulations (**proposed subsection 54J(4) and (5)**).

The Government has argued that this approach is necessary for security purposes and reflects the intention of the NFA:

> 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. (p. 12, Explanatory Memorandum)

Amendments in Part 2 of Schedule 4 propose other changes to the criminal assessment process which are not limited to firearms background checking, including:

- 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 (**proposed paragraph 54C(1)(iii)**)

- allow the ACIC to undertake criminal intelligence assessments on its 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 (**proposed subsection 54C(5)**) and
- provide legislative authority for the ACIC to use automated decision making for certain types of criminal intelligence assessments (**proposed sections 54G and 54H**).

Changes to ASIO's security assessment framework

One of ASIO's key responsibilities is to provide security assessments of individuals to other Australian Government agencies. These can range from a basic check of personal details against intelligence holdings, to a complex, in-depth investigation to determine the nature and extent of an identified threat to Australia's national security.

Under existing Part IV of the ASIO Act, ASIO can furnish security assessments in relation to the exercise of any power, or the performance of any function, with respect 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 licence is consistent with security requirements, or whether security considerations make such action necessary or desirable.

Item 27 of Schedule 2 of the Bill will expand this power to include decisions about whether to renew, revoke, vary or suspend a firearms licence. As with criminal intelligence assessments performed by the ACIC, an adverse security assessment relating to a firearms licensing decision will not require notification unless otherwise prescribed by the regulations. Such a decision will also not be subject to merits review unless otherwise prescribed by the regulations. The Government has argued that the removal of the right to seek merits review of an adverse security assessment relating to a firearms licensing decision is to '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' (p. 234, Explanatory Memorandum).

Part 2 of Schedule 4 also inserts provisions into the ASIO Act which will enable specified assessment action (to be determined by an instrument made by the Minister) to be automated through use of a computer program. Before making any such instrument the Minister must consult with Inspector-General of Intelligence and Security (IGIS) and after making the instrument provide a copy to the PCJIS and the IGIS (**item 30**).

Amendments to the Crimes Act to allow for the disclosure of spent, pardoned or quashed convictions

Divisions 2 and 3 of Part VIIC of the *Crimes Act 1914* regulate the disclosure, filing, recording and use of information concerning pardoned, quashed and spent convictions for Commonwealth and Territory offences. As a general principle a person who has a pardoned, quashed, or spent conviction under a Commonwealth law is not required to disclose charges or a conviction in relation to that matter. A number of exclusions to this general position are provided in Division 6 of Part VIIC of the Crimes Act.

Recent amendments to the Crimes Act allow ASIO to use, record and disclose spent conviction information for the purpose of ASIO's functions (see section 85ZZJA). **Items 34-35** of Part 2 of Schedule 4 will amend section 85ZZJA to allow ASIO to use, record and disclose pardoned and quashed conviction information for the purpose of ASIO's functions. **Proposed section 85ZZJB** will introduce similar exclusions for the ACIC with respect to information relating to pardons, quashed and spent convictions.

Part 2 of Schedule 4 will also amend the Crimes Act to provide a direct authorisation for agencies to use or disclose information relating to a person's conviction of an offence that is spent, pardoned or quashed. Specifically, **proposed section 85ZZJC** provides 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
- 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.

According to the Explanatory Memorandum, '[t]hese 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.' (p. 14) This would also include restrictions on the disclosure of information about children:

> 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).
>
> New subsections 85ZZJC(4)-(6) would expressly authorise ASIO, the ACIC and intelligence or security agencies to use and disclose such information for particular purposes, to reflect the relevance of this information. (p. 245, Explanatory Memorandum)

Consequential amendments

Division 4, Part 2 of Schedule 4 contains a number of consequential amendments, some of which are significant. For example:

- amendments to the *Administrative Decisions (Judicial Review) Act 1977* to exclude any decision made by the ACIC, CEO or the Minister under Part III of the ACC Act (the new criminal intelligence assessments framework) from being subject to judicial review under that Act.
- amendments to the *Surveillance Devices Act 2004* to allow the ACIC to receive and 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 purpose.

- amendments to the *Telecommunications (Interception and Access) Act 1979* which will allow lawfully intercepted information and interception warrant information to be communicated, used, or recorded for the performance of the ACIC's criminal intelligence assessment function.

Transmission of firearms information and other information to ACIC (Part 3)

Part 3 of Schedule 4 amends the *Customs Act 1901* to allow for the sharing of firearms information, and other information prescribed by the regulations, to the ACIC Chief Executive Officer, on the authorisation of the Secretary of Home Affairs, or the Comptroller-General of Customs.

The ACIC will administers the NFR (which is not yet operational) and the National Criminal Intelligence System (NCIS). According to the Government, '[t]hese amendments provide relevant legislative basis to support the transmission of information between relevant stakeholders to facilitate an ACIC criminal intelligence assessment' [p. 5].

Public safety tests for firearms and weapons (Part 4)

As explained in the Explanatory Memorandum, the importation of firearms into Australia is regulated through the Customs (Prohibited Imports) Regulations 1956 (Prohibited Imports Regulations):

> The importation of firearms and certain weapons into Australia is primarily governed under Schedules 6 and 13 to the Prohibited Imports Regulation. 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. (p.17)

Part 4 of the Bill will insert sections 4FA and 4HA into the Prohibited Imports Regulations which introduce a public safety test for firearms and weapons being imported into Australia. This will give the Minister administering the Prohibited Imports Regulations the power to choose to assess whether the importation of a firearm/weapon poses a risk to the health, safety or security of the public or a segment of the public (which specifically includes emergency services personnel). The Minister will also have the power to request information from the person importing the good and would be required to make, by legislative instrument, rules for determining 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. These instruments would be subject to disallowance.

Importation of firearms (Part 5) and ammunition equipment (Part 8)

Parts 5 and 8 of Schedule 4 would amend the Customs Prohibited Imports Regulations to strengthen import controls for firearms related goods and ammunition equipment.

As set out in the Attorney-General's Department's submission to the PJCIS inquiry into the Bill, the proposed amendments to Schedule 6 of the Customs Prohibited Imports Regulations would tighten import controls on the following firearms and related articles:

- **Assisted repeating action and straight pull repeating action firearms:** these terms will now be defined and import requirements will be imposed on firearms which meet the definition in line with existing requirements in Schedule 6 for the importation of semi-automatic firearms.
- **Firearms which are operated using belt-fed ammunition:** import permission requirements would be imposed which would place belt-fed firearms under the same importation restrictions as fully automatic firearms (the highest possible category).
- **Magazines with a capacity of more than 30 rounds:** 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 (for example, semi-automatic firearms).
- **Handguns:** amends the regulations to require Commonwealth importation permission for handguns instead of state and territory police certification.
- **Frames and receivers:** introduces identification and serial number requirements for frames and receivers, aligning them with the existing requirements for complete firearms.
- **Skirmish markers:** introduces additional requirements for the importation of skirmish markers to impose identification requirements and safety testing as per all other firearms imported into Australia. These amendments will also define gel-ball blasters as firearms, bringing them under Commonwealth import controls and mandating identification and safety requirements.
- **Sound suppressors:** introduces a requirement to serialise sound suppressors and require visual inspection for the importation of sound suppressors.
- **Speed loaders:** introduces a requirement to capture speed loaders as firearm accessories and require import permissions.
- **Ammunition equipment:** impose import requirements for ammunition equipment, and importation can only occur where they comply with one of the prescribed tests. A new definition of 'ammunition equipment' will also be inserted into the Customs Prohibited Imports Regulations.

Further information on each of these changes is set out in the Attorney-General's Department's submission to the PJCIS inquiry into the Bill (pp. 21-23).

Part 5 of Schedule 4 of the Bill will also amend the 'specified person test' in Part 1, Schedule 6 of the Customs Prohibited Imports Regulations to introduce an additional requirement that the importer has produced evidence that they are an Australian citizen. This reflects the agreement by the Commonwealth and state and territory governments to limit firearm licenses to Australian citizens (noting this change will occur through amendments to state/territory legislation).

Approved forms for police certification for firearms imports (Part 6)

In general, Category A and B firearms can be imported into Australia with certification from a state or territory police firearms and weapons registry (police certification) which then must

be presented to Australian Border Force (ABF) at the time of importation. According to the Explanatory Memorandum, 'Open-ended, or ongoing, permits can be used [to] support import [of] 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' (p. 302).

Part 6 of Schedule 2 will amend the Customs Prohibited Imports Regulations to cease ongoing certification by state and territory police and instead require certification for each import. This will apply to certification that has been provided prior to the commencement of these amendments.

Offences relating to use of carriage service for firearms and explosives manufacture (Part 7)

Part 7 of Schedule 4 will 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. These new offences will be inserted into Division 474 of the Criminal Code and will carry a maximum penalty of 5 years imprisonment.

According to the Government:

> The new offences established by the Bill 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. For example, the offences could be committed by accessing or transmitting firearms and explosives manufacture material using a range of platforms such as web pages, social media applications, email, chat forums, and text messages; or by downloading firearms and explosives manufacture material from the internet onto a digital storage device. (p. 24)

Proposed section 474.45J of the Criminal Code sets out defences with respect to the new offences, including a range of legitimate uses of such material:

- when a business owner holds a licence or permit that authorises the manufacture, repair, maintenance or modification of the relevant devices, and accesses the material in connection with the carrying on of their business
- conduct that is necessary for enforcing a law
- conduct that is for the purposes of proceedings in a court or tribunal
- conduct that is in connection with the performance by a public official of the official's duties or functions or
- scientific, academic or historical research.

Schedule 5: Transitional rules

Schedule 5 would allow the AFP Minister 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. These rules may operate retrospectively.

Licence

© Commonwealth of Australia

Creative Commons

With the exception of the Commonwealth Coat of Arms, and to the extent that copyright subsists in a third party, this publication, its logo and front page design are licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia licence.

In essence, you are free to copy and communicate this work in its current form for all non-commercial purposes, as long as you attribute the work to the author and abide by the other licence terms. The work cannot be adapted or modified in any way. Content from this publication should be attributed in the following way: Author(s), Title of publication, Series Name and No, Publisher, Date.

To the extent that copyright subsists in third party quotes it remains with the original owner and permission may be required to reuse the material.

Inquiries regarding the licence and any use of the publication are welcome to webmanager@aph.gov.au.

Disclaimer

Bills Digests are prepared to support the work of the Australian Parliament. They are produced under time and resource constraints and aim to be available in time for debate in the Chambers. The views expressed in Bills Digests do not reflect an official position of the Australian Parliamentary Library, nor do they constitute professional legal opinion. Bills Digests reflect the relevant legislation as introduced and do not canvass subsequent amendments or developments. Other sources should be consulted to determine the official status of the Bill.

Any concerns or complaints should be directed to the Parliamentary Librarian at webmanager@aph.gov.au. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library's Central Enquiry Point for referral.

Acknowledgement of Country

We acknowledge the traditional owners and custodians of country throughout Australia and acknowledge their continuing connection to land, waters and community. We pay our respects to the people, the cultures and the elders past, present and emerging.

The Parliamentary Library of Australia was established in 1901 and serves as a trusted source of information, analysis and advice for the Australian Parliament. The Library is part of the Department of Parliamentary Services.

Our services are confidential, impartial, and offered on an equal basis to all parliamentarians, parliamentary committees, and to staff acting on their behalf.

Our published material is available to everyone at:

aph.gov.au/library

Australian Parliamentary Library

@ParlLibrary

Confidential, Impartial, Timely

ISSN 1328-8091