





# **Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023**

**No. 113, 2023**

**An Act to amend the *Criminal Code Act 1995*, and  
for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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No. 113, 2023

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**An Act to amend the *Criminal Code Act 1995*, and  
for other purposes**

[Assented to 11 December 2023]

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *Counter-Terrorism Legislation Amendment  
(Prohibited Hate Symbols and Other Measures) Act 2023*.

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No. 113, 2023

*Counter-Terrorism Legislation Amendment (Prohibited Hate  
Symbols and Other Measures) Act 2023*

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 December 2023
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	8 January 2024
3. Schedule 3, item 1	The day after this Act receives the Royal Assent.	12 December 2023
4. Schedule 3, item 2	The 28th day after this Act receives the Royal Assent.	8 January 2024
5. Schedule 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they do not commence at all.	
6. Schedule 5	The day after this Act receives the Royal Assent.	12 December 2023

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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### 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Note: The provisions of the *Legislation (Exemptions and Other Matters) Regulation 2015* amended or inserted by this Act, and any other provisions of those regulations, may be amended or repealed by regulations made under section 62 of the *Legislation Act 2003* (see subsection 13(5) of that Act).

## Schedule 1—Prohibited symbols and Nazi salute

### *Crimes Act 1914*

#### **1 Paragraph 4J(7)(b)**

After “Division 80”, insert “(other than Subdivision CA)”.

#### **2 Paragraphs 15AA(2)(c) and (d)**

After “Division 80”, insert “(other than Subdivision CA)”.

#### **3 Paragraph 19AG(1)(c)**

After “Division 80”, insert “(other than Subdivision CA)”.

### *Criminal Code Act 1995*

#### **4 Division 80 of the *Criminal Code* (heading)**

Omit “and advocating terrorism or genocide”, substitute “, advocating terrorism or genocide, and prohibited symbols and Nazi salute”.

#### **5 After Subdivision C of Division 80 of the *Criminal Code***

Insert:

#### **Subdivision CA—Publicly displaying, and trading in, prohibited symbols and giving Nazi salute**

#### **80.2E Prohibited symbols**

- (1) Each of the following is a *prohibited symbol*:
  - (a) a prohibited Nazi symbol;
  - (b) a prohibited terrorist organisation symbol.
- (2) Each of the following is a *prohibited Nazi symbol*:
  - (a) the Nazi hakenkreuz;
  - (b) the Nazi double-sig rune;

- 
- (c) something that so nearly resembles a thing to which paragraph (a) or (b) applies that it is likely to be confused with, or mistaken for, that thing.
- (3) Each of the following is a ***prohibited terrorist organisation symbol***:
- (a) a symbol that a terrorist organisation (within the meaning of Division 102) uses, or members of a terrorist organisation use, to identify the organisation;
  - (b) something that so nearly resembles a symbol to which paragraph (a) applies that it is likely to be confused with, or mistaken for, that symbol.

### **80.2F Meaning of *displayed in a public place***

- (1) A thing is ***displayed in a public place*** if it is capable of being seen by a member of the public who is in a public place (whether or not the thing is actually so seen by a member of the public).
- (2) A thing is also ***displayed in a public place*** if it is included in:
- (a) a document (including, for example, a newspaper, magazine, program, leaflet or ticket); or
  - (b) a film, video or television program;
- that is available, or distributed, to the public or a section of the public.
- (3) A thing is also ***displayed in a public place*** if it is included in a document, film, video or television program that is available, or distributed to, the public or a section of the public by means of a telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution including, for example, by means of the internet.
- Example: If a thing is included in a document that is available to the public or a section of the public on a website, then the thing is displayed in a public place under this subsection.
- (4) In this section, ***available*** or ***distributed*** includes available or distributed as of right or by invitation, whether express or implied, and whether or not a charge is made for availability or distribution.

**80.2FA Meaning of *makes a gesture in a public place***

A person *makes a gesture in a public place* if:

- (a) the person makes a gesture; and
- (b) the gesture is capable of being seen by a member of the public who is in a public place (whether or not the gesture is actually so seen by a member of the public).

**80.2G Meaning of *trades***

- (1) For the purposes of this Subdivision, a person *trades* in goods if:
  - (a) the person sells the goods; or
  - (b) the person prepares the goods for supply with the intention of selling the goods or believing that another person intends to sell the goods; or
  - (c) the person transports the goods with the intention of selling the goods or believing that another person intends to sell the goods; or
  - (d) the person guards or conceals the goods with the intention of selling the goods or assisting another person to sell the goods; or
  - (e) the person possesses the goods with the intention of selling the goods.
- (2) For the purposes of paragraph (1)(b) and sections 80.2J and 80.2JA, preparing goods for supply includes packaging the goods or separating the goods into discrete units.
- (3) This section and sections 80.2J and 80.2JA apply in relation to leasing out or renting out (or agreeing to lease out or rent out) in the same way as they apply in relation to selling.
- (4) In this section and sections 80.2J and 80.2JA:

*conceal* goods includes conceal or disguise:

  - (a) the nature, source or location of the goods; or
  - (b) any movement of the goods; or
  - (c) the rights of any person with respect to the goods; or
  - (d) the identity of any owner of the goods.

**possession** of goods includes the following:

- (a) receiving or obtaining possession of the goods;
- (b) having control over the disposition of the goods (whether or not the goods are in the custody of the person);
- (c) having joint possession of the goods.

**sell** includes the following:

- (a) barter or exchange;
- (b) agree to sell.

**supply** includes the following:

- (a) supply, whether or not by way of sale;
- (b) agree to supply.

**transport** includes deliver.

## **80.2H Public display of prohibited Nazi symbols or giving Nazi salute**

- (1) A person commits an offence if:
  - (a) the person:
    - (i) causes a thing to be displayed in a public place; or
    - (ii) makes a gesture in a public place; and
  - (b) the thing is a prohibited Nazi symbol, or the gesture is a Nazi salute; and
  - (c) subsection (3), (4) or (7) applies; and
  - (d) subsection (9) does not apply.

Note: For defences, see subsection (10).

Penalty: Imprisonment for 12 months.

- (2) Absolute liability applies to paragraphs (1)(c) and (d).
- (3) For the purposes of paragraph (1)(c), this subsection applies if a reasonable person would consider that the conduct mentioned in paragraph (1)(a):
  - (a) involves dissemination of ideas based on racial superiority or racial hatred; or
  - (b) could incite another person or a group of persons to offend, insult, humiliate or intimidate:

- (i) a person (the *targeted person*) because of the race of the targeted person; or
- (ii) the members of a group of persons (the *targeted group*) because of the race of some or all of the members of the targeted group.

Note: The object of this subsection is to give further effect to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, done at New York on 21 December 1965. The Convention is in Australian Treaty Series 1975 No. 40 ([1975] ATS 40) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (4) For the purposes of paragraph (1)(c), this subsection applies if a reasonable person would consider that the conduct mentioned in paragraph (1)(a) involves advocacy that:
  - (a) is advocacy of hatred of:
    - (i) a group of persons distinguished by race, religion or nationality (a *targeted group*); or
    - (ii) a member of a targeted group; and
  - (b) constitutes incitement of another person or group of persons to offend, insult, humiliate, intimidate or use force or violence against:
    - (i) the targeted group; or
    - (ii) a member of the targeted group.

Note: The object of this subsection is to give further effect to article 20 of the Covenant.

- (5) For the purposes of paragraph (4)(a), it does not matter whether the conduct actually results in the hatred mentioned in that paragraph.
  - (6) For the purposes of paragraph (4)(b), it does not matter whether the conduct actually incites another person as mentioned in that paragraph.
  - (7) For the purposes of paragraph (1)(c), this subsection applies if the conduct mentioned in paragraph (1)(a) is likely to offend, insult, humiliate or intimidate a person who is:
    - (a) a reasonable person; and
    - (b) a member of a group of persons distinguished by race, colour, sex, language, religion, political or other opinion or national or social origin;
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because of the reasonable person's membership of that group.

Note: The object of this subsection is to give further effect to article 26 of the Covenant.

- (8) For the purposes of subsection (7), it does not matter whether a member of the group sees:
- (a) the thing while it is displayed in a public place; or
  - (b) the gesture while it is made in a public place.
- (9) For the purposes of paragraph (1)(d), this subsection applies if a reasonable person would consider that:
- (a) the conduct mentioned in paragraph (1)(a) is engaged in for a purpose that is:
    - (i) a religious, academic, educational, artistic, literary or scientific purpose; and
    - (ii) not contrary to the public interest; or
  - (b) the conduct mentioned in paragraph (1)(a) is engaged in for the purposes of making a news report, or a current affairs report, that:
    - (i) is in the public interest; and
    - (ii) is made by a person working in a professional journalistic capacity.

#### *Defences*

- (10) Subsection (1) does not apply to a person engaging in conduct mentioned in paragraph (1)(a) if:
- (a) engaging in the conduct is necessary for enforcing a law of:
    - (i) the Commonwealth; or
    - (ii) a State; or
    - (iii) a Territory; or
    - (iv) a foreign country; or
    - (v) a part of a foreign country; or
  - (b) engaging in the conduct is necessary for monitoring compliance with, or investigating a contravention of, a law of:
    - (i) the Commonwealth; or
    - (ii) a State; or

- (iii) a Territory; or
- (iv) a foreign country; or
- (v) a part of a foreign country; or
- (c) the person engages in the conduct for the purposes of proceedings in a court or tribunal; or
- (d) both:
  - (i) the person engages in the conduct in connection with the performance by a public official of the official's duties or functions; and
  - (ii) engaging in the conduct is reasonable in the circumstances for the purpose of the public official performing that duty or function; or
- (e) both:
  - (i) the person engages in the conduct in connection with an individual assisting a public official in relation to the performance of the public official's duties or functions; and
  - (ii) engaging in the conduct is reasonable in the circumstances for the purpose of the individual assisting the public official in relation to the performance of the public official's duties or functions; or
- (f) the person genuinely engages in the conduct for the purpose of opposing Nazi ideology, fascism or a related ideology.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

#### *Functions*

- (11) The references in this section to function or functions do not, by implication, affect the meaning of the expressions duty or duties when used in any other provision of this Code.

### **80.2HA Public display of prohibited terrorist organisation symbols**

- (1) A person commits an offence if:
    - (a) the person causes a thing to be displayed in a public place; and
    - (b) the person knows that the thing is a prohibited terrorist organisation symbol; and
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- (c) subsection (3), (4) or (7) applies; and
- (d) subsection (9) does not apply.

Note: For defences, see subsection (10).

Penalty: Imprisonment for 12 months.

- (2) Absolute liability applies to paragraphs (1)(c) and (d).
- (3) For the purposes of paragraph (1)(c), this subsection applies if a reasonable person would consider that the conduct mentioned in paragraph (1)(a):
  - (a) involves dissemination of ideas based on racial superiority or racial hatred; or
  - (b) could incite another person or a group of persons to offend, insult, humiliate or intimidate:
    - (i) a person (the **targeted person**) because of the race of the targeted person; or
    - (ii) the members of a group of persons (the **targeted group**) because of the race of some or all of the members of the targeted group.

Note: The object of this subsection is to give further effect to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, done at New York on 21 December 1965. The Convention is in Australian Treaty Series 1975 No. 40 ([1975] ATS 40) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (4) For the purposes of paragraph (1)(c), this subsection applies if a reasonable person would consider that the conduct mentioned in paragraph (1)(a) involves advocacy that:
  - (a) is advocacy of hatred of:
    - (i) a group of persons distinguished by race, religion or nationality (a **targeted group**); or
    - (ii) a member of a targeted group; and
  - (b) constitutes incitement of another person or group of persons to offend, insult, humiliate, intimidate or use force or violence against:
    - (i) the targeted group; or
    - (ii) a member of the targeted group.

## Schedule 1 Prohibited symbols and Nazi salute

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Note: The object of this subsection is to give further effect to article 20 of the Covenant.

- (5) For the purposes of paragraph (4)(a), it does not matter whether the conduct actually results in the hatred mentioned in that paragraph.
- (6) For the purposes of paragraph (4)(b), it does not matter whether the conduct actually incites another person as mentioned in that paragraph.
- (7) For the purposes of paragraph (1)(c), this subsection applies if the conduct mentioned in paragraph (1)(a) is likely to offend, insult, humiliate or intimidate a person who is:
  - (a) a reasonable person; and
  - (b) a member of a group of persons distinguished by race, colour, sex, language, religion, political or other opinion or national or social origin;because of the reasonable person's membership of that group.

Note: The object of this subsection is to give further effect to article 26 of the Covenant.

- (8) For the purposes of subsection (7), it does not matter whether a member of the group sees the thing while it is displayed in a public place.
- (9) For the purposes of paragraph (1)(d), this subsection applies if a reasonable person would consider that:
  - (a) the conduct mentioned in paragraph (1)(a) is engaged in for a purpose that is:
    - (i) a religious, academic, educational, artistic, literary or scientific purpose; and
    - (ii) not contrary to the public interest; or
  - (b) the conduct mentioned in paragraph (1)(a) is engaged in for the purposes of making a news report, or a current affairs report, that:
    - (i) is in the public interest; and
    - (ii) is made by a person working in a professional journalistic capacity.

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*Defences*

- (10) Subsection (1) does not apply to a person engaging in conduct mentioned in paragraph (1)(a) if:
- (a) engaging in the conduct is necessary for enforcing a law of:
    - (i) the Commonwealth; or
    - (ii) a State; or
    - (iii) a Territory; or
    - (iv) a foreign country; or
    - (v) a part of a foreign country; or
  - (b) engaging in the conduct is necessary for monitoring compliance with, or investigating a contravention of, a law of:
    - (i) the Commonwealth; or
    - (ii) a State; or
    - (iii) a Territory; or
    - (iv) a foreign country; or
    - (v) a part of a foreign country; or
  - (c) the person engages in the conduct for the purposes of proceedings in a court or tribunal; or
  - (d) both:
    - (i) the person engages in the conduct in connection with the performance by a public official of the official's duties or functions; and
    - (ii) engaging in the conduct is reasonable in the circumstances for the purpose of the public official performing that duty or function; or
  - (e) both:
    - (i) the person engages in the conduct in connection with an individual assisting a public official in relation to the performance of the public official's duties or functions; and
    - (ii) engaging in the conduct is reasonable in the circumstances for the purpose of the individual assisting the public official in relation to the performance of the public official's duties or functions; or
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- (f) the person genuinely engages in the conduct for the purpose of opposing the ideology or purposes of a terrorist organisation (within the meaning of Division 102).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

*Functions*

- (11) The references in this section to function or functions do not, by implication, affect the meaning of the expressions duty or duties when used in any other provision of this Code.

### **80.2J Trading in prohibited Nazi symbols**

- (1) A person commits an offence if:
  - (a) the person trades in goods; and
  - (b) the goods depict or contain a prohibited Nazi symbol; and
  - (c) the person knows that, or is reckless as to whether, the prohibited Nazi symbol is associated with Nazi ideology; and
  - (d) subsection (3) applies; and
  - (e) subsections (4) and (5) do not apply.

Note: For defences, see subsections (6) to (8).

Penalty: Imprisonment for 12 months.

- (2) Absolute liability applies to paragraphs (1)(d) and (e).

*Jurisdictional requirements*

- (3) For the purposes of paragraph (1)(d), this subsection applies if:
  - (a) the trading occurs to any extent outside Australia; or
  - (b) the trading involves transportation across State borders, either for reward or in connection with a commercial arrangement; or
  - (c) the trading occurs within a Territory or involves transportation to or from a Territory; or
  - (d) the trading is engaged in by, or on behalf of, a constitutional corporation; or

- (e) some of the trading is engaged in by communication using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
- (f) the trading:
  - (i) occurs to any extent at a Commonwealth place; or
  - (ii) involves transportation to or from a Commonwealth place; or
- (g) the person is an alien; or
- (h) the trading involves the person:
  - (i) selling the goods to an alien; or
  - (ii) preparing the goods for supply with the intention of selling them to an alien or believing that another person intends to sell them to an alien or believing that an alien intends to sell them; or
  - (iii) transporting the goods with the intention of selling them to an alien or believing that another person intends to sell them to an alien or believing that an alien intends to sell them; or
  - (iv) guarding or concealing the goods with the intention of selling them to an alien or with the intention of assisting another person to sell them to an alien or with the intention of assisting an alien to sell them; or
  - (v) possessing the goods with the intention of selling them to an alien.

*Other matters*

- (4) For the purposes of paragraph (1)(e), this subsection applies if a reasonable person would consider that:
  - (a) the goods that are traded are intended to serve a religious, academic, educational, artistic, literary or scientific purpose; and
  - (b) the person's trading in the goods is not contrary to the public interest.
- (5) For the purposes of paragraph (1)(e), this subsection applies if:
  - (a) the goods that are traded contain one or more news reports or current affairs reports; and

- (b) each prohibited Nazi symbol that the goods depict or contain appears in such a report and only appears in such a report; and
- (c) in relation to each such report in which a prohibited Nazi symbol appears—a reasonable person would consider that:
  - (i) the report was made by a person working in a professional journalistic capacity; and
  - (ii) disseminating the report is in the public interest.

*Defences*

- (6) Subsection (1) does not apply to a person's trading in goods if:
  - (a) the goods that are traded contain commentary on public affairs; and
  - (b) each prohibited Nazi symbol that the goods depict or contain appears in the commentary and only appears in the commentary; and
  - (c) in relation to commentary in which a prohibited Nazi symbol appears—making the commentary is in the public interest.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (7) Subsection (1) does not apply to a person's trading in goods if the trading is necessary for or of assistance in:
  - (a) enforcing a law of the Commonwealth, a State or Territory, or a foreign country; or
  - (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or Territory, or a foreign country; or
  - (c) the administration of justice (whether within or outside Australia).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (8) Subsection (1) does not apply to a person's trading in goods if:
  - (a) both:
    - (i) the trading is in connection with the performance by a public official of the official's duties or functions; and

- (ii) the trading is reasonable in the circumstances for the purpose of the public official performing that duty or function; or
- (b) both:
  - (i) the trading is in connection with an individual assisting a public official in relation to the performance of the public official's duties or functions; and
  - (ii) the trading is reasonable in the circumstances for the purpose of the individual assisting the public official in relation to the performance of the public official's duties or functions.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

*Interpretation*

- (9) The references in this section to function or functions do not, by implication, affect the meaning of the expressions duty or duties when used in any other provision of this Code.
- (10) In this section, **Commonwealth place** has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

**80.2JA Trading in prohibited terrorist organisation symbols**

- (1) A person commits an offence if:
  - (a) the person trades in goods; and
  - (b) the goods depict or contain a symbol; and
  - (c) the person knows that the symbol is a prohibited terrorist organisation symbol; and
  - (d) subsection (3) applies; and
  - (e) subsections (4) and (5) do not apply.

Note: For defences, see subsections (6) to (8).

Penalty: Imprisonment for 12 months.

- (2) Absolute liability applies to paragraphs (1)(d) and (e).

*Jurisdictional requirements*

- (3) For the purposes of paragraph (1)(d), this subsection applies if:
- (a) the trading occurs to any extent outside Australia; or
  - (b) the trading involves transportation across State borders, either for reward or in connection with a commercial arrangement; or
  - (c) the trading occurs within a Territory or involves transportation to or from a Territory; or
  - (d) the trading is engaged in by, or on behalf of, a constitutional corporation; or
  - (e) some of the trading is engaged in by communication using a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution; or
  - (f) the trading:
    - (i) occurs to any extent at a Commonwealth place; or
    - (ii) involves transportation to or from a Commonwealth place; or
  - (g) the person is an alien; or
  - (h) the trading involves the person:
    - (i) selling the goods to an alien; or
    - (ii) preparing the goods for supply with the intention of selling them to an alien or believing that another person intends to sell them to an alien or believing that an alien intends to sell them; or
    - (iii) transporting the goods with the intention of selling them to an alien or believing that another person intends to sell them to an alien or believing that an alien intends to sell them; or
    - (iv) guarding or concealing the goods with the intention of selling them to an alien or with the intention of assisting another person to sell them to an alien or with the intention of assisting an alien to sell them; or
    - (v) possessing the goods with the intention of selling them to an alien.

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*Other matters*

- (4) For the purposes of paragraph (1)(e), this subsection applies if a reasonable person would consider that:
- (a) the goods that are traded are intended to serve a religious, academic, educational, artistic, literary or scientific purpose; and
  - (b) the person's trading in the goods is not contrary to the public interest.
- (5) For the purposes of paragraph (1)(e), this subsection applies if:
- (a) the goods that are traded contain one or more news reports or current affairs reports; and
  - (b) each prohibited terrorist organisation symbol that the goods depict or contain appears in such a report and only appears in such a report; and
  - (c) in relation to each such report in which a prohibited terrorist organisation symbol appears—a reasonable person would consider that:
    - (i) the report was made by a person working in a professional journalistic capacity; and
    - (ii) disseminating the report is in the public interest.

*Defences*

- (6) Subsection (1) does not apply to a person's trading in goods if:
- (a) the goods that are traded contain commentary on public affairs; and
  - (b) each prohibited terrorist organisation symbol that the goods depict or contain appears in the commentary and only appears in the commentary; and
  - (c) in relation to commentary in which a prohibited terrorist organisation symbol appears—making the commentary is in the public interest.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (7) Subsection (1) does not apply to a person's trading in goods if the trading is necessary for or of assistance in:

- (a) enforcing a law of the Commonwealth, a State or Territory, or a foreign country; or
- (b) monitoring compliance with, or investigating a contravention of, a law of the Commonwealth, a State or Territory, or a foreign country; or
- (c) the administration of justice (whether within or outside Australia).

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (8) Subsection (1) does not apply to a person's trading in goods if:
- (a) both:
    - (i) the trading is in connection with the performance by a public official of the official's duties or functions; and
    - (ii) the trading is reasonable in the circumstances for the purpose of the public official performing that duty or function; or
  - (b) both:
    - (i) the trading is in connection with an individual assisting a public official in relation to the performance of the public official's duties or functions; and
    - (ii) the trading is reasonable in the circumstances for the purpose of the individual assisting the public official in relation to the performance of the public official's duties or functions.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

#### *Interpretation*

- (9) The references in this section to function or functions do not, by implication, affect the meaning of the expressions duty or duties when used in any other provision of this Code.
- (10) In this section, **Commonwealth place** has the same meaning as in the *Commonwealth Places (Application of Laws) Act 1970*.

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**80.2K Directions to cease display of prohibited symbols in public***Directions*

- (1) A police officer may, in accordance with section 80.2L, direct a person to cause a prohibited symbol to cease to be displayed in a public place if:
  - (a) the prohibited symbol is displayed in a public place as mentioned in subsection 80.2F(1) (other than by being made available on the internet); and
  - (b) subsection (2), (3) or (6) of this section applies.

*Circumstances in which direction may be given*

- (2) For the purposes of paragraph (1)(b), this subsection applies if the police officer reasonably suspects that the display in a public place mentioned in paragraph (1)(a):
  - (a) involves dissemination of ideas based on racial superiority or racial hatred; or
  - (b) could incite another person or a group of persons to offend, insult, humiliate or intimidate:
    - (i) a person (the **targeted person**) because of the race of the targeted person; or
    - (ii) the members of a group of persons (the **targeted group**) because of the race of some or all of the members of the targeted group.

Note: The object of this subsection is to give further effect to Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, done at New York on 21 December 1965. The Convention is in Australian Treaty Series 1975 No. 40 ([1975] ATS 40) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

- (3) For the purposes of paragraph (1)(b), this subsection applies if the police officer reasonably suspects that the display in a public place mentioned in paragraph (1)(a) involves advocacy that:
  - (a) is advocacy of hatred of:
    - (i) a group of persons distinguished by race, religion or nationality (a **targeted group**); or
    - (ii) a member of a targeted group; and

(b) constitutes incitement of another person or group of persons to offend, insult, humiliate, intimidate or use force or violence against:

- (i) the targeted group; or
- (ii) a member of the targeted group.

Note: The object of this subsection is to give further effect to article 20 of the Covenant.

- (4) For the purposes of paragraph (3)(a), it does not matter whether the conduct actually results in the hatred mentioned in that paragraph.
- (5) For the purposes of paragraph (3)(b), it does not matter whether the conduct actually incites another person as mentioned in that paragraph.
- (6) For the purposes of paragraph (1)(b), this subsection applies if the police officer reasonably suspects that the display in a public place mentioned in paragraph (1)(a) is likely to offend, insult, humiliate or intimidate a person who is:
  - (a) a reasonable person; and
  - (b) a member of a group of persons distinguished by race, colour, sex, language, religion, political or other opinion or national or social origin;because of the reasonable person's membership of that group.

Note: The object of this subsection is to give further effect to article 26 of the Covenant.

- (7) For the purposes of subsection (6), it does not matter whether a member of the group sees the prohibited symbol while it is displayed in a public place.

*Time by which direction must be complied with*

- (8) A direction given under subsection (1) must specify the time by which the prohibited symbol must cease to be displayed in a public place. The time must be reasonable.

*Definitions*

- (9) In this section:

***police officer*** means:

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- 
- (a) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
  - (b) a special member of the Australian Federal Police (within the meaning of that Act); or
  - (c) a member (however described) of a police force of a State or Territory.

**80.2L Directions to cease display of prohibited symbols in public—  
person to whom, and form in which, direction may be  
given**

- (1) A police officer may give a direction to cause a prohibited symbol to cease to be displayed in a public place under subsection 80.2K(1) only in accordance with subsection (2), (3) or (4) of this section.
- (2) The direction may be given to a person, either orally or in writing, if the police officer suspects on reasonable grounds that:
  - (a) one or more of the following is satisfied:
    - (i) the person caused the prohibited symbol to be displayed in a public place;
    - (ii) the person is an owner or an occupier of land or premises on, at or from which the prohibited symbol is displayed in a public place;
    - (iii) the person is an owner or an occupant of an aircraft, vehicle or vessel on or from which the prohibited symbol is displayed in a public place; and
  - (b) there are steps the person can take to cause the prohibited symbol to cease to be displayed in a public place.
- (3) The direction may also be given in writing by being left on or at land or premises on, at or from which the prohibited symbol is displayed in a public place. In this case, the direction is taken to have been given to each person who is an owner or occupier of the land or premises at the time the direction is given.
- (4) The direction may also be given in writing by being affixed or placed in a conspicuous manner on an aircraft, vehicle or vessel on or from which the prohibited symbol is displayed in a public place. In this case, the direction is taken to have been given to each

person who is an owner of the aircraft, vehicle or vessel at the time the direction is given.

**80.2M Directions to cease display of prohibited symbols in public—offence**

*Offence*

- (1) A person commits an offence if:
- (a) the person is given a direction under subsection 80.2K(1); and
  - (b) the prohibited symbol specified in the direction does not cease to be displayed in a public place before the time specified in the direction under subsection 80.2K(8).

Penalty: 20 penalty units.

- (2) Strict liability applies to paragraph (1)(b).

*Defences*

- (3) Subsection (1) does not apply if:
- (a) the conduct that caused the prohibited symbol to be displayed in a public place was genuinely engaged in for a purpose that is:
    - (i) a religious, academic, educational, artistic, literary or scientific purpose; and
    - (ii) not contrary to the public interest; or
  - (b) the conduct that caused the prohibited symbol to be displayed in a public place was engaged in for the purposes of making a news report, or a current affairs report, that is:
    - (i) in the public interest; and
    - (ii) made by a person working in a professional journalistic capacity; or
  - (c) if the prohibited symbol is a prohibited Nazi symbol—any of paragraphs 80.2H(10)(a) to (f) applied to the person engaging in the conduct that caused the prohibited symbol to be displayed in a public place; or
  - (d) if the prohibited symbol is a prohibited terrorist organisation symbol—any of paragraphs 80.2HA(10)(a) to (f) applied to

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the person engaging in the conduct that caused the prohibited symbol to be displayed in a public place.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

- (4) For the purposes of paragraphs (3)(a), (b) and (c), it does not matter whether the conduct referred to in those paragraphs was conduct of the person who is given the direction as mentioned in paragraph (1)(a).
- (5) Subsection (1) does not apply if:
- (a) both:
    - (i) the person (the *recipient*) who is given the direction did not cause the prohibited symbol to be displayed in a public place; and
    - (ii) when the direction is given, the recipient is not an owner or an occupier of land or premises on, at or from which the prohibited symbol is displayed in a public place, or an owner of an aircraft, vehicle or vessel on or from which the prohibited symbol is displayed in a public place; or
  - (b) either the person (the *recipient*) who is given the direction takes all reasonable steps to cause the prohibited symbol to cease to be displayed in a public place, or there are no such steps that the recipient can take.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

## **6 Subsection 80.4(2) of the *Criminal Code***

Repeal the subsection, substitute:

- (2) Section 15.2 (extended geographical jurisdiction—category B) applies to an offence against:
- (a) section 80.1AC; or
  - (b) subsection 80.2A(2); or
  - (c) subsection 80.2B(2); or
  - (d) subsection 80.2C(1); or
  - (e) subsection 80.2H(1); or
  - (ea) subsection 80.2HA(1); or

- (f) subsection 80.2J(1); or
- (fa) subsection 80.2JA(1); or
- (g) subsection 80.2M(1).

## 7 Dictionary in the *Criminal Code*

Insert:

***displayed in a public place*** has the meaning given by section 80.2F.

***journalistic capacity*** means a capacity as a journalist, editor, producer or other person involved in the process of making news reports or current affairs reports.

***makes a gesture in a public place*** has the meaning given by section 80.2FA.

***prohibited Nazi symbol*** has the meaning given by subsection 80.2E(2).

***prohibited symbol*** has the meaning given by subsection 80.2E(1).

***prohibited terrorist organisation symbol*** has the meaning given by subsection 80.2E(3).

***public place*** includes 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.

## 8 Transitional provision

For the purposes of Subdivision CA of Division 80 of the *Criminal Code*, if:

- (a) a person caused a thing to be displayed in a public place before the commencement of this item; and
- (b) on that commencement, the thing had not ceased to be displayed in a public place;

the person is taken to cause, on that commencement, the thing to be displayed in a public place.

## **Schedule 2—Use of carriage service for violent extremist material**

### ***Crimes Act 1914***

#### **1 Subsection 3(1) (after paragraph (b) of the definition of terrorism offence)**

Insert:

(ba) an offence against Subdivision HA of Division 474 of the *Criminal Code*; or

#### **2 At the end of subsection 15GE(3)**

Add:

; (f) Subdivision HA of Division 474 (Use of carriage service for violent extremist material).

### ***Criminal Code Act 1995***

#### **3 After Subdivision H of Division 474 of the *Criminal Code***

Insert:

#### **Subdivision HA—Offences relating to use of carriage service for violent extremist material**

##### **474.45A Meaning of *violent extremist material***

- (1) Material is *violent extremist material* if:
- (a) the material:
    - (i) describes or depicts serious violence; or
    - (ii) provides instruction on engaging in serious violence; or
    - (iii) supports or facilitates serious violence; and
  - (b) a reasonable person would consider that, in all the circumstances, the material is intended to directly or indirectly advance a political, religious or ideological cause; and

- (c) a reasonable person would consider that, in all the circumstances, the material is intended to assist, encourage or induce a person to:
  - (i) engage in, plan or prepare for an intimidatory act; or
  - (ii) do a thing that relates to engaging in, planning or preparing for an intimidatory act; or
  - (iii) join or associate with an organisation that is directly engaged in the doing of any intimidatory act, or that is preparing, planning, assisting in or fostering the doing of any intimidatory act.
- (2) For the purposes of paragraph (1)(a), **serious violence** is action that falls within subsection 100.1(2).
- (3) An **intimidatory act** is a violent action, or threat of violent action, where the action is done, or the threat is made, with the intention of:
  - (a) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
  - (b) intimidating the public or a section of the public.
- (4) To avoid doubt:
  - (a) material may be intended to do a thing referred to in paragraph (1)(b) or (c) even if the material is also intended, or mainly intended, to do one or more other things; and
  - (b) an action may be done, or a threat may be made, with an intention referred to in subsection (3) even if that intention is not the only intention, or the main intention, with which the action is done or the threat is made.
- (5) Material is also **violent extremist material** if:
  - (a) it is reasonable to consider the material together with other material; and
  - (b) were all of the material to be taken to be a single item of material, it would constitute violent extremist material under subsection (1).

**474.45B Using a carriage service for violent extremist material**

- (1) A person commits an offence if:
- (a) the person:
    - (i) accesses material; or
    - (ii) causes material, or an electronic link that can be used to access material, to be transmitted to the person; or
    - (iii) transmits, makes available, publishes, distributes, advertises or promotes material or an electronic link that can be used to access material; or
    - (iv) solicits material or an electronic link that can be used to access material; and
  - (b) the person does so using a carriage service; and
  - (c) the material is violent extremist material.

Penalty: Imprisonment for 5 years.

- (2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):
- (a) intention is the fault element for the conduct referred to in paragraph (1)(a);
  - (b) recklessness is the fault element for the circumstance referred to in paragraph (1)(c).
- (3) Absolute liability applies to paragraph (1)(b).

**474.45C Possessing or controlling violent extremist material obtained or accessed using a carriage service**

- (1) A person commits an offence if:
- (a) the person has possession or control of material; and
  - (b) the material is in the form of data held in a computer or contained in a data storage device; and
  - (c) the person used a carriage service to obtain or access the material; and
  - (d) the material is violent extremist material.

Penalty: Imprisonment for 5 years.

- (2) To avoid doubt, the following are the fault elements for the physical elements of an offence against subsection (1):
  - (a) intention is the fault element for the conduct referred to in paragraph (1)(a);
  - (b) recklessness is the fault element for the circumstance referred to in paragraph (1)(d).
- (3) Strict liability applies to paragraph (1)(b).
- (4) Absolute liability applies to paragraph (1)(c).
- (5) If the prosecution proves beyond reasonable doubt the matters mentioned in paragraphs (1)(a), (b) and (d), then it is presumed, unless the person proves to the contrary, that the person:
  - (a) obtained or accessed the material; and
  - (b) used a carriage service to obtain or access the material.

Note: A defendant bears a legal burden in relation to the matters in this subsection: see section 13.4.

#### **474.45D Defences in respect of violent extremist material**

- (1) Subsection 474.45B(1) or 474.45C(1) does not apply to engaging in conduct in relation to material if:
  - (a) the conduct is necessary for enforcing a law of:
    - (i) the Commonwealth; or
    - (ii) a State; or
    - (iii) a Territory; or
    - (iv) a foreign country; or
    - (v) a part of a foreign country; or
  - (b) the conduct is necessary for monitoring compliance with, or investigating a contravention of, a law of:
    - (i) the Commonwealth; or
    - (ii) a State; or
    - (iii) a Territory; or
    - (iv) a foreign country; or
    - (v) a part of a foreign country; or
  - (c) the conduct is for the purposes of proceedings in a court or tribunal; or

- (d) both:
  - (i) the conduct is necessary for, or of assistance in, conducting scientific, medical, academic or historical research; and
  - (ii) the conduct is reasonable in the circumstances for the purpose of conducting that scientific, medical, academic or historical research; or
- (e) the material relates to a news report, or a current affairs report, that:
  - (i) is in the public interest; and
  - (ii) is made by a person working in a professional journalistic capacity; or
- (f) both:
  - (i) the conduct is in connection with the performance by a public official of the official's duties or functions; and
  - (ii) the conduct is reasonable in the circumstances for the purpose of the public official performing that duty or function; or
- (g) both:
  - (i) the conduct is in connection with an individual assisting a public official in relation to the performance of the public official's duties or functions; and
  - (ii) the conduct is reasonable in the circumstances for the purpose of the individual assisting the public official in relation to the performance of the public official's duties or functions; or
- (h) the conduct is for the purpose of advocating the lawful procurement of a change to any matter established by law, policy or practice in:
  - (i) the Commonwealth; or
  - (ii) a State; or
  - (iii) a Territory; or
  - (iv) a foreign country; or
  - (v) a part of a foreign country;and the conduct is reasonable in the circumstances for that purpose; or

- (i) the conduct relates to the development, performance, exhibition or distribution, in good faith, of an artistic work.

Note: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3)).

#### *Functions*

- (2) The references in this section to function or functions do not, by implication, affect the meaning of the expressions duty or duties when used in any other provision of this Code.

### **474.45E Consent to commencement of proceedings where defendant under 18**

- (1) Proceedings for an offence against this Subdivision must not be commenced without the consent of the Attorney-General if the defendant was under 18 at the time the defendant allegedly engaged in the conduct constituting the offence.
- (2) However, a person may be arrested for, charged with, or remanded in custody or on bail in connection with, such an offence before the necessary consent has been given.

### **4 Subsections 475.1A(1) and (2) of the *Criminal Code***

After “G”, insert “, HA”.

### **5 Dictionary in the *Criminal Code***

Insert:

*intimidatory act* has the meaning given by subsection 474.45A(3).

*violent extremist material* has the meaning given by section 474.45A.

### **6 Transitional provision**

For the purposes of paragraph 474.45C(1)(c) of the *Criminal Code*, it does not matter whether the person obtained or accessed the material before, on or after the commencement of this item.

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## Schedule 3—Advocating terrorism

### *Criminal Code Act 1995*

#### **1 Subsection 80.2C(1) of the *Criminal Code* (penalty)**

Repeal the penalty, substitute:

Penalty:

- (a) if subparagraph (a)(i) of this subsection applies—  
imprisonment for 7 years; or
- (b) if subparagraph (a)(ii) of this subsection applies—  
imprisonment for 7 years or for the maximum term of  
imprisonment for the terrorism offence advocated, whichever  
is the lesser.

#### **2 Subsection 80.2C(3) of the *Criminal Code* (definition of *advocates*)**

Repeal the definition, substitute:

*advocates*: a person *advocates* the doing of a terrorist act or the commission of a terrorism offence if:

- (a) the person counsels, promotes, encourages or urges the doing of a terrorist act or the commission of a terrorism offence; or
- (b) the person provides instruction on the doing of a terrorist act or the commission of a terrorism offence; or
- (c) the person praises the doing of a terrorist act or the commission of a terrorism offence in circumstances where there is a substantial risk that such praise might have the effect of leading another person to engage in a terrorist act or to commit a terrorism offence.

## Schedule 4—Terrorist organisation regulations

### Part 1—Sunsetting

#### *Criminal Code Act 1995*

**1 Subsection 102.1(1) of the *Criminal Code* (paragraph (b) of the definition of *terrorist organisation*)**

Omit “(3)”, substitute “(2A)”.

**2 Subsection 102.1(1) of the *Criminal Code* (paragraph (b) of the definition of *terrorist organisation*)**

After “and (4)”, insert “and section 102.1AA”.

**3 Subsection 102.1(3) of the *Criminal Code***

Repeal the subsection.

**4 Subsection 102.1AA(3) of the *Criminal Code***

Repeal the subsection, substitute:

- (3) Amendment of regulations under subsection (2) does not prevent the further amendment or repeal of the regulations by regulations made under section 5 of this Act for the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1).

#### *Legislation (Exemptions and Other Matters) Regulation 2015*

**5 Section 12 (after table item 18B)**

Insert:

- 18C A regulation made solely for the purposes of paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*

## **Part 2—De-listing declarations**

### ***Criminal Code Act 1995***

#### **6 Subsection 102.1(1) of the *Criminal Code* (paragraph (b) of the definition of *terrorist organisation*)**

Omit “(4)”, substitute “(4B)”.

#### **7 Subsection 102.1(4) of the *Criminal Code***

Omit “The regulations, to the extent to which they specify the organisation, cease to have effect when the declaration is made.”.

#### **8 After subsection 102.1(4) of the *Criminal Code***

Insert:

(4A) The declaration must specify the day on which the Minister ceased to be so satisfied.

(4B) The regulations, to the extent to which they specify the organisation, are taken to cease to have effect on the day specified in the declaration under subsection (4A), even if that day occurred before the day on which the declaration is made.

#### **9 Subsection 102.1(5) of the *Criminal Code***

Omit “subsection (4) does”, substitute “subsections (4) to (4B) do”.

## Part 3—De-listing applications

### *Criminal Code Act 1995*

#### **10 Subsection 102.1(17) of the *Criminal Code***

Omit “(17) If”, substitute “(16) Subsection (17) applies if”.

#### **11 At the end of paragraph 102.1(17)(c) of the *Criminal Code***

Add “and”.

#### **12 Subsection 102.1(17) of the *Criminal Code***

Omit all the words after paragraph (c), substitute:

- (d) the AFP Minister did not receive an application from any individual or organisation under paragraph (b) of this subsection in relation to the listed organisation during the 12 months ending when the AFP Minister receives the de-listing application.

#### **13 After subsection 102.1(17) of the *Criminal Code***

Insert:

- (17) The AFP Minister must, as soon as practicable after receiving the de-listing application, consider whether the listed organisation:
  - (a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act; or
  - (b) advocates the doing of a terrorist act;as the case requires.

Note: If the AFP Minister ceases to be satisfied of either of these (as the case requires), the AFP Minister must make a declaration under subsection (4) in relation to the listed organisation.

#### **14 Subsection 102.1(18) of the *Criminal Code***

Omit “Subsection (17) does”, substitute “Subsections (16) and (17) do”.

## **Part 4—Reviews**

### ***Criminal Code Act 1995***

#### **15 Subsection 102.1A(1) of the *Criminal Code* (heading)**

Repeal the heading.

#### **16 Subsection 102.1A(1) of the *Criminal Code***

Omit “disallowable”, substitute “legislative”.

#### **17 Subsection 102.1A(2) of the *Criminal Code* (heading)**

Repeal the heading.

#### **18 Paragraphs 102.1A(2)(a) and (b) of the *Criminal Code***

Repeal the paragraphs, substitute:

- (a) review the legislative instrument at any time; and
- (b) report the Committee’s comments and recommendations to each House of the Parliament.

#### **19 Subsection 102.1A(3) of the *Criminal Code* (heading)**

After “disallowable”, insert “legislative”.

#### **20 Subsection 102.1A(3) of the *Criminal Code***

After “disallowable” (first occurring), insert “legislative”.

#### **21 Subsection 102.1A(3) of the *Criminal Code***

After “Parliament”, insert “under subsection (2)”.

#### **22 Subsection 102.1A(3) of the *Criminal Code***

After “disallowable” (second occurring), insert “legislative”.

#### **23 Subsection 102.1A(4) of the *Criminal Code***

After “disallowable” (wherever occurring), insert “legislative”.

#### **24 Dictionary in the *Criminal Code***

Insert:

*disallowable legislative instrument* has the meaning given by the  
*Legislation Act 2003*.

## **Part 5—Application provisions**

### ***Criminal Code Act 1995***

#### **25 In the appropriate position in Division 106 of the *Criminal Code***

Insert:

#### **106.12 Application provision for certain amendments in the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023***

- (1) The amendments made by Part 1 of Schedule 4 to the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023* apply in relation to:
  - (a) regulations made before the commencement of this section that were not repealed, and did not cease to have effect, before that commencement; or
  - (b) regulations made on or after that commencement.
- (2) The amendments made by Part 2 of Schedule 4 to the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023* apply in relation to a declaration made under subsection 102.1(4) of this Code on or after the commencement of this section.
- (3) The amendments made by Part 3 of Schedule 4 to the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023* apply in relation to a de-listing application received on or after the commencement of this section.
- (4) A reference in paragraph 102.1(16)(d) of this Code to an application made under paragraph (b) of subsection 102.1(16) is taken to include a reference to an application made under paragraph 102.1(17)(b) of this Code during the 12 months ending immediately before the commencement of this section.

**Schedule 4** Terrorist organisation regulations

**Part 5** Application provisions

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- (5) The amendments made by Part 4 of Schedule 4 to the *Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Act 2023* apply in relation to:
- (a) a legislative instrument made before the commencement of this section that was not repealed, and did not cease to have effect, before that commencement; or
  - (b) a legislative instrument made on or after that commencement.

## **Schedule 5—Other measures**

### ***Criminal Code Act 1995***

#### **1 Paragraph 271.11(f) of the *Criminal Code***

Omit “for the purposes of paragraph 51(xix) of the Constitution”.

#### **2 Subparagraphs 474.37(1)(f)(ii) and (2)(f)(ii) of the *Criminal Code***

Before “performing”, insert “the public official”.

#### **3 Dictionary in the *Criminal Code***

Insert:

***alien*** means a person who is an alien for the purposes of paragraph 51(xix) of the Constitution.

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[*Minister’s second reading speech made in—  
House of Representatives on 14 June 2023  
Senate on 4 December 2023*]

(77/23)