

Supreme Court  
New South Wales

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Case Name: State of New South Wales v Hickey (Preliminary)

Medium Neutral Citation: [2022] NSWSC 1498

Hearing Date(s): 24 October 2022

Date of Orders: 4 November 2022

Decision Date: 4 November 2022

Jurisdiction: Common Law

Before: N Adams J

Decision: (1) The Summons is dismissed.

(2) The plaintiff is to pay the defendant's costs.

Catchwords: TERRORISM HIGH RISK OFFENDER – preliminary hearing – application for an interim detention order and the appointment of experts – Terrorism (High Risk Offenders) Act 2017 ss 34, 41 – weapons offences – whether offender poses unacceptable risk of committing serious terrorism offence – propagation of extreme right views and material online – grievances with government and the judiciary – offender has no connection with NSW – speculative “risk scenarios” vis-à-vis “serious terrorism offence” under the Cth Code – offender’s extreme views have long history and are persistent – requisite degree of satisfaction of unacceptable risk not reached – summons dismissed

Legislation Cited: Crimes (Administration of Sentences) Act 1999 (NSW), s 158  
Criminal Code Act 1995 (Cth)  
Terrorism (High Risk Offenders) Act 2017 (NSW)  
Weapons Prohibition Act 1998 (NSW), s 7(1), Sch 1

Cases Cited: Fair Work Ombudsman v Hickey (No 2) [2021]  
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Hickey v State Parole Authority [2022] NSWSC 1389  
Home Affairs v Benbrika (2021) 388 ALR 1; [2021] HCA  
4  
Lynn v State of New South Wales (2016) 91 NSWLR  
636; [2016] NSWCA 57  
R v Lodhi [2006] NSWSC 584  
State of New South Wales v Cheema (Preliminary)  
[2020] NSWSC 876  
State of New South Wales v Elmir (Final) [2019]  
NSWSC 1867  
State of New South Wales v Holt [2021] NSWSC 1076  
State of New South Wales v Kiskonen [2021] NSWSC  
915  
State of New South Wales v Naaman (No 2) [2018]  
NSWCA 328  
State of New South Wales v Pacey (Final) [2015]  
NSWSC 1983  
State of New South Wales v Simcock (Final) [2016]  
NSWSC 1805  
State of New South Wales v Sotheren (Preliminary)  
[2018] NSWSC 754  
State of NSW v Elomar (No 2) [2018] NSWSC 1034  
State of NSW v Golding (Preliminary) [2018] NSWSC  
1041  
State of NSW v Naaman (No 2) [2018] NSWSC 1329  
The State of New South Wales v Reginald Collingwood  
(a pseudonym) [2021] NSWSC 1365

Category:

Principal judgment

Parties:

State of New South Wales (Plaintiff)  
Simon John Hickey (Defendant)

Representation:

Counsel:  
J Single SC with R McEwen (Plaintiff)  
E Kerkyasharian with D Bhutani (Defendant)

Solicitors:

Crown Solicitor's Office (Plaintiff)  
Ryan Payten Le (Defendant)

File Number(s):

2022/275994

Publication Restriction:

Nil.

## JUDGMENT

- 1 By summons filed on 15 September 2022, the State of New South Wales (“the State”) seeks a continuing detention order (“CDO”) for a period of 12 months against Simon Hickey under the *Terrorism (High Risk Offenders) Act 2017* (NSW) (“THRO Act”). In the alternative, an order is sought that the defendant be subject to an extended supervision order for a period of three years (“ESO”).
- 2 Mr Hickey is a 46-year-old man who ascribes to a “far right” ideology. His views are long standing and firmly held; he appears to have held them since 1996. He is not a member of any extremist group, although he was the only corporate sponsor of “The Daily Stormer”, an American far right group website. He is an electrician by trade and up until recently ran a successful business in Brisbane employing 12 men. By all accounts, he is well-organised and highly motivated in his endeavours.
- 3 Up until 2018 Mr Hickey was a business owner with a minor criminal record, married with a child who, in his spare time, spent a considerable time online expressing hatred for women, homosexuals, Jews, Muslims and anyone else who was not a white male (although he has also expressed hatred for many white men including judges, magistrates and barristers). In doing so he has used far right memes, Nazi insignia, Nordic mythology and other language used by the far right. Although many of Mr Hickey’s posts are laced with violent themes, he had never been convicted of any violent crimes, despite holding these views for over 25 years.
- 4 Things began to unravel for Mr Hickey in 2018. His home in Brisbane was raided in 2017 by Fair Trading investigators following an allegation that he had illegally installed CCTV cameras. This event led to him being charged with intimidation against one of those investigators, Ms Siobhan Dash, who he perceived was targeting him for his (known) views. Those charges led to breaches by Mr Hickey (in the form of publication, not actual contact), which led to more raids.
- 5 Since 2019, Mr Hickey has spent short periods in custody for breaching restraining orders, contempt of court (including not paying a court fine imposed

by the Fair Work Commission in relation to a former employee) and being in possession of prohibited items.

- 6 After his family home was the subject of several raids over a period of a year, Mr Hickey devised a scheme to get his revenge on Queensland (“QLD”) police. He manufactured (by using a 3D printer in his home) and sold caltrops, which are road spikes that can be dropped from a car onto the road to prevent another vehicle from chasing your vehicle. At the time he did so he was aware that caltrops were *not* illegal in QLD. He named this product “HikDeploy”. I shall describe that venture in more detail below.
- 7 Following his dealings with QLD police, he moved his family over the New South Wales (“NSW”) Border to Kingscliff where he resided with his wife and child for a short time before he was arrested for being in breach of his parole condition to remain in QLD. He was also charged in relation to the HikDeploy product at that time; although it is legal to possess them in QLD, it is *illegal* to do so in NSW. At around this time his wife and child moved to Russia. Mr Hickey has remained in custody in either NSW or QLD since that time.
- 8 Mr Hickey’s recent court and criminal history is somewhat complex, but I have attempted to summarise it below. He is currently serving a sentence of imprisonment of 18 months in relation to possession of the caltrops without a permit contrary to s 7(1) of the *Weapons Prohibition Act 1998* (NSW). That sentence will expire on 12 November 2022.
- 9 The most concerning action taken by Mr Hickey occurred on a date between 15 March and 1 April 2019. On 1 April 2019, a search warrant was executed at his home in Brisbane in relation to a breach of a restraining order (the act relied upon was posting of a video in relation to Ms Dash executing a search warrant at his premises) and traffic related offences. A recording was located by police titled “Ebba’s Revenge” which included footage of a massacre which occurred in Christchurch on 15 March 2019. On that day an Australian man, Brendan Tarrant, went on a shooting spree in two mosques in Christchurch killing 51 people and injuring 40 others. The gunman live streamed the killings. The footage was seen by millions online before it was taken down. Mr Hickey modified the footage of the massacre, made it appear like an online game,

included “humorous commentary” and sent it in encrypted form to five people. In plain terms, he expressed approval for what Mr Tarrant had done and referred to it as a “prank”.

- 10 Mr Hickey has also produced another film entitled “How the Left has destroyed Australia”. Considerable time was spent at the preliminary hearing playing that recording, which goes for over an hour and a half. It is analysed in the expert report of Dr Julian Droogan and I have considered it further below. Excerpts were played in court and submissions made about those excerpts. It was submitted that I needed to watch *all* of that footage in chambers (which I did), but it was not submitted that I needed to watch “Ebba’s Revenge”.
- 11 Mr Hickey was due to be released on statutory parole on 12 February 2022, but his parole order was revoked on 11 February 2022 following his classification as an “National security inmate”. This led to him serving his entire sentence in custody. He is currently in a NSW prison although he has no connection with this state. It is proposed by the State that he spend another year in a NSW prison under a CDO. The alternative position is that he remain in NSW for the next three years under an ESO.
- 12 As required by s 38 of the THRO Act, a preliminary hearing was conducted before me on 24 October 2022. Ms Jennifer Single SC with Ms Rebecca McEwen of counsel appeared for the State and Mr Emanuel Kerkyasharian with Mr Dev Bhutani of counsel appeared for Mr Hickey. In addition to orders appointing a qualified psychiatrist and a registered psychologist to prepare reports about Mr Hickey, the State sought an interim detention order (“IDO”) for a period of 28 days. In the alternative, an interim supervision order (“ISO”) for a period of 28 days was sought. Those interim orders were sought until any final hearing in this matter.
- 13 For the purposes of the preliminary hearing only, Mr Hickey did not take issue with the statutory preconditions for making the order except for the “unacceptable risk” aspect of the test. It was submitted that the “unacceptable risk” test could not be established and that the summons should be dismissed with costs.

- 14 As Ms Single conceded at the hearing, this is a difficult matter. Mr Hickey has held extremist views for over 25 years without acting on them in a way that would harm the public. Quite separately to that, his recent interactions with police, Government officials and the courts in QLD have left him profoundly resentful of the legal system and State officials. The crucial question is whether Mr Hickey's views and recent conduct meet the statutory requirements under the THRO Act such that he needs to be either detained or supervised to prevent him from committing an act of terrorism.

### **The supporting documentation**

- 15 At the preliminary hearing last week, seventeen lever arch folders of documents were tendered. In addition, lengthy submissions and schedules were relied upon and a number of USBs tendered. In particular, the State relied upon the two recordings I have referred to above. I will discuss them further below. Many of the folders tendered on his preliminary application comprised extensive printouts of Mr Hickey's online content over the past 12 years. Thousands and thousands of pages of his posts were tendered. It has simply not been possible to read all of that material for the purposes of this judgment. The State provided extensive summaries and submissions running to hundreds of pages. It is not feasible for me to reproduce those summaries in these reasons.
- 16 It is most unfortunate that this application could not have been put before the court in a more manageable way. The difficulty appears to have arisen from the fact that most of the material relied upon comes from Mr Hickey's comments on online forums and social media platforms over many years. It is understandable that the State wanted to put as much information as possible before the court to put its case at its highest but when it tried to reduce the amount of material put before the court that course was opposed by Mr Hickey's counsel. Mr Kerkysharian insisted that I have all of the materials as he contended that some of the posts extracted by the State in its submissions were taken out of context and I needed to read them all in context.
- 17 For the record, I have *not* read all 17 folders of material put before the court on this preliminary application. I was provided with insufficient time to do so.

Having read as much of the material as I could, I have come to the view that much of it was highly repetitive. I have absorbed as much of this material as I could in the limited time available, but I have only had regard to matters which were identified and relied upon by the parties in their respective submissions. In particular, I have gone to all of the entries Mr Kerysharian contended were taken out of context and read them in context. Otherwise, I have confined myself to the summaries in the schedules tendered by the State.

18 The State relied upon the following affidavits and reports:

- (1) The affidavit of Robert Bermingham sworn on 13 May 2022 with exhibits "RB-1" (8 lever arch folders of PDF files of online searches) and "RB-2" (a USB containing the video content captured of online searches). He is a Senior Constable of police in the High Risk Terrorist Offenders Unit ("HRTOU") of the NSW Police.
- (2) SC Bermingham reviewed social media platforms and other online content in relation to the defendant in the period between 1 July 2021 and 10 May 2022 and also provided contextual information about them. The online platforms included Wayback Machine, Facebook, YouTube, BitChute, Pinterest, Twitter, Stormfront and 4Chan/POL/Feed. He also assisted DSC Kiran Sharma in reviewing the contents of the Cellebrite extractions for the two seized mobile phones; iPhone X and iPhone 6S. His role was to draw links between the information contained in the mobile phones and his online and social media presence;
- (3) The affidavit of Ryan Williams sworn on 19 May 2022 with Annexures A, B and C (photographs of viewed items taken from police exhibit bag labelled "Three HikDeplay devices + spare parts, a photograph of a blue plastic object with swastika symbol on it, copies of EFIMS records, and a copy of five ".gcode" files used in 3D printers). He is a Detective Senior Constable of police in the HRTOU;
- (4) The affidavit of David Greenway sworn on 25 May 2022 with Annexures A, B and C (his statements dated 1 and 5 October 2021 and photographs taken during the execution of search warrant on 28 August 2019). He is a Detective Senior Constable of police involved in the arrest of Mr Hickey. He took photographs of various items of significance during the execution of a search warrant at the defendant's residence on 28 August 2019. He also performed examination of the defendant's iPhone X data using Cellebrite software programs and produced extraction reports and video files;
- (5) The affidavit of Timothy Deaves sworn on 15 June 2022 with Annexure A (a copy of the Exhibits Forensics Information and Miscellaneous Property System ("EFIMS") record). He is a Plain Clothes Senior Constable also involved in the arrest of Mr Hickey;

- (6) The affidavit of Michael Foster sworn on 16 June 2022 with exhibit “MF-1” (comprising a USB of body worn video footage and annexing photographs of the defendant’s tattoos). He is a Corrective Services Officer.
  - (7) Two affidavits of Nigel Webb sworn 6 July 2021 with Annexure A (a copy of the envelope addressed to the defendant and a letter dated 9 March 2022 signed “Mum”) and 18 October 2022 with Annexure A (a copy of the envelope addressed to the defendant and a letter dated 6 August 2022 signed “Dad”). He is a Corrective Services Officer;
  - (8) The affidavit of Kiran Sharma affirmed 20 July 2022 with exhibits “KS-1” (comprising a USB containing mobile phones Cellebrite extractions) and “KS-2” (a USB containing a selection of the audio and video files identified during extractions). He is a Detective Senior Constable of police in the HRTOU;
  - (9) The affidavit of Aftab Khan affirmed 13 September 2022. He is a Corrective Services Officer, and his affidavit outlines the mechanism and procedure with respect to electronic monitoring of the offenders);
  - (10) Three affidavits of Anna Johnson. She is the solicitor at the Crown Solicitor’s Office with carriage of this matter. Exhibit “AJ-1” to her first affidavit affirmed 15 September 2022 comprised three lever arch folders that included, inter alia, the defendant’s criminal history and background information; Risk Assessment Report prepared by Maggie Cruickshank on 1 August 2022; Risk Management Report prepared by Kimberley Rambaud, Enforcement Officer in the HRTOU, Community Corrections on 22 August 2022; and the Report of Dr Julian Droogan, Associate Professor of Terrorism Studies at Macquarie University dated June 2022). Exhibit “AJ-2” to her first affidavit comprised a USB of materials relating to Mr Hickey;
  - (11) Ms Johnson’s second affidavit was affirmed on 20 September 2022. It included the Annexure A which was the ESO Management Report dated 12 September 2022 prepared by Detective Sergeant Marco Buttigieg in the HRTOU;
  - (12) Her third affidavit affirmed 20 October 2022 included Annexure A which was a copy of the updated Offender Integrated Management System (“OIMS”) notes for the period 21 July to 18 October 2022.
- 19 The defendant did not rely upon any evidence at the preliminary hearing.
- 20 Before I turn to consider the substantial amount of supporting documentation relied upon by the State to answer the first question, it is necessary to outline the relevant legislative scheme and the relevant test.

### **The THRO Act**

- 21 The starting point is to note the objects of the THRO Act which are set out in s 3:



(1) The primary object of this Act is to provide for the extended supervision and continuing detention of certain offenders posing an *unacceptable risk* of committing *serious terrorism offences* so as to ensure the safety and protection of the community.

(2) Another object of this Act is to encourage these offenders to undertake rehabilitation.

(Emphasis added.)

- 22 In short, I am being asked to take the first step on a path which would ultimately see Mr Hickey either detained or supervised to prevent him from committing a serious terrorism offence.
- 23 Part 2 of the THRO Act (ss 19-32) concerns extended supervision orders (“ESOs”) and Part 3 of the THRO Act (ss 33-49) concerns continuing detention orders (“CDOs”).
- 24 A “serious terrorism offence” is defined in s 4 of the THRO Act as an offence against Pt 5.3 of the *Criminal Code Act 1995* (Cth) for which a maximum penalty of at least 7 years of imprisonment applies. Part 5.3 of the *Criminal Code* is headed “Terrorism” and contains a number of such offences, including engaging in a terrorist act (s 101.1(1)), providing or receiving training connected with terrorist acts (s 101.2), possessing things connected with terrorist acts (s 101.4), collecting or making documents likely to facilitate terrorist acts (s 101.5), acts done in preparation or planning for or planning of terrorist acts (s 101.6), directing the activities of a terrorist organisation (s 102.2), membership of a terrorist organisation (s 102.3), recruiting for a terrorist organisation (s 102.4), associating with terrorist organisations (s 102.8) and so forth.
- 25 In order for the court to make any order under the THRO Act the defendant must first be an “eligible offender”. An eligible offender is defined under s 7 as a person who is aged 18 years or older and is serving (or is continuing to be supervised or detained under the THRO Act after serving) a sentence of imprisonment for a NSW indictable offence. A NSW indictable offence is an offence against the law of the State for which proceedings *may* be taken on indictment (whether or not they may also be taken otherwise than on indictment): s 4(1), THRO Act.

26 I am satisfied that the defendant is an eligible offender. Counsel for the defendant did not submit otherwise. He is over 18 years of age and is currently serving a sentence of imprisonment for the indictable offences described further below.

27 Section 39(1) of the THRO Act provides that the court may determine an application for a CDO by either making a CDO, making an ESO, or dismissing the application. Section 34 of the THRO Act provides that the court may order a CDO in respect of an eligible offender if:

- (1) The offender is a detained or supervised offender (or was at the time the original application for the order was filed): s 34(1)(a);
- (2) An application is made in accordance with Part 3 of the THRO Act (s 34(1)(b));
- (3) The Court is satisfied that the offender is (inter alia) a convicted NSW terrorism activity offender: (s 34(1)(c));
- (4) The Court is satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious terrorism offence if not kept in detention under the order: (s 34(1)(d)).

28 The four preconditions for the imposition of an ESO are substantially similar but condition (d) provides that the offender would pose an unacceptable risk if not kept under supervision: (s 20 of the THRO Act). I will proceed by reference to the provisions in Pt 3 of the THRO Act, "Continuing detention orders".

29 As stated above, for the purposes of this preliminary application, Mr Hickey accepts that the first three requirements above can be established. The nub of the opposition to the making of any interim orders is the contention that the fourth requirement cannot be established. I will first address why I am satisfied that the first three statutory requirements can be established. I shall spend the remainder of this judgment assessing the material before me in order to determine whether the material, if proved, could establish the fourth requirement (the "unacceptable risk" test).

*First statutory precondition: Is Mr Hickey a detained offender? (s 34(1)(a))*

30 A detained offender is defined in s 33 of the THRO Act as follows:

**detained offender** means a person who is in custody:

- (a) while serving a sentence of imprisonment for a NSW indictable offence, or

(b) under an existing continuing detention order, emergency detention order or interim detention order.

31 It was not in dispute that the defendant was a detained offender at the time the application was made (and thereafter) under s 33(a). I am satisfied that this first statutory precondition is satisfied.

*Second statutory precondition: Was the application made in accordance with Part 3 of the THRO Act? (s 34(1)(b))*

32 Section 37 of the THRO Act sets out the requirements for the making of an application. An application may only be made in relation to either a detained or supervised offender and, if an application is made in relation to a detained offender, such application may not be made more than 12 months before the end of the offender's total sentence or the expiry of an existing CDO. An application must be supported by documentation that addresses each of the matters referred to in s 39(3) of the THRO Act and must include a report prepared by a qualified psychiatrist, registered psychologist, registered medical practitioner or other relevant expert that assesses the likelihood of the eligible offender committing a serious terrorism offence.

33 Section 38 of the THRO Act provides for the necessary pre-trial procedures. Significantly, s 38(4) provides that a preliminary hearing into the application is to be conducted within 28 days after the application is filed or within such further time as the Supreme Court may allow.

34 It was accepted that the State's application had been made in accordance with Parts 2 and 3 of the THRO Act. I am satisfied that this second statutory precondition is satisfied.

*Third statutory precondition: Is Mr Hickey a "convicted NSW terrorism activity offender"? (s 34(1)(c))*

35 Section 10 of the THRO Act defines a "convicted NSW terrorism activity offender" as follows:

**10 Convicted NSW terrorism activity offender**

(1) In this Act, an eligible offender is a *convicted NSW terrorism activity offender* if the offender is serving (or is continuing to be supervised or detained under this Act after serving) a sentence of imprisonment for a NSW indictable offence (the *offender's offence*) and any of the following apply in respect of the offender:

...

(c) the offender:

(i) is making or has previously made any statement (or is carrying out or has previously carried out any activity) advocating support for any *terrorist act* or *violent extremism*, or

(ii) has or previously had any personal or business association or other affiliation with any person, group of persons or organisation that is or was advocating support for any terrorist act or violent extremism.

(Emphasis added.)

36 The term “terrorist act” is defined in s 100.1 of the *Criminal Code* (incorporated under s 4(1) of the THRO Act), as an act done or a threat made with the intention of advancing a political, religious or ideological cause by coercing, or influencing by intimidation the government of a state, territory or country, or intimidating the public or a section of the public. The relevant act must be one that causes serious physical harm or death to a person, serious damage to property, endangers the life of a person other than the offender, creates a serious risk to the health or safety of the public or a section of the public or seriously interferes with, disrupts or destroys an electronic system. It is to be accepted that this is a *broad* definition; it encompasses a range of preparatory offences and acts falling short of actual terrorist acts which cause injury to persons or damage to property: *State of New South Wales v Cheema (Preliminary)* [2020] NSWSC 876 at [187]. As Whealy J observed in *R v Lodhi* [2006] NSWSC 584 the definition of “terrorist act” in the *Criminal Code* “postulates an action or threat of action of the widest possible kind” (at [75]).

37 The term “violent extremism” is not defined in either the *Criminal Code* or the THRO Act. It was judicially considered in *State of New South Wales v Elmir (Final)* [2019] NSWSC 1867 by Walton J at [34] as follows:

“The term ‘violent extremism’ is not defined in the THRO Act. It was added to s 10 via the *Community Protection Legislation Amendment Bill 2018* (NSW). The Oxford Online Dictionary defines ‘extremism’ as ‘[t]he holding of extreme political or religious views; fanaticism’. Violent extremism can, therefore, be understood as violence motivated by, or undertaken in furtherance of, extreme political or religious views. It was submitted by the plaintiff, correctly in my view, that the inclusion of the term ‘violent extremism’ was intended to broaden s 10(1)(c) so as to capture conduct in support of violent actions that might not satisfy the technical definition of terrorist act. For example, an act not directed at coercing the government or intimidating a section of the public.”

38 I am satisfied that the inclusion of the term “violent extremism” broadens the scope of s 10(1)(c) so as to capture conduct in support of violent actions that might not satisfy the technical definition of terrorist act.

39 As the statutory requirement to be a “convicted NSW terrorism activity offender” makes clear, it is not necessary for the defendant to have been convicted of an offence connected with terrorism: *State of New South Wales v Naaman (No 2)* [2018] NSWCA 328 (“*Naaman*”) at [22].

40 The State relies on subs 10(1)(c)(i) in relation to the defendant. That is, it contends that the defendant is a convicted NSW terrorism activity offender because he is both currently serving a prison term for an indictable offence, *and* he has previously made a statement advocating support for a terrorist act or violent extremism. Section 10(1A)(a) of the THRO Act provides that the following conduct falls within the ambit of subs 10(c):

(1A) Without limiting subsection (1) (c):

(a) advocating support for a terrorist act or violent extremism includes (but is not limited to) any of the following:

(i) making a pledge of loyalty to a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,

(ii) using or displaying images or symbols associated with a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism,

(iii) making a threat of violence of a kind that is promoted by a person, group of persons or organisation, or an ideology, that supports terrorist acts or violent extremism, and

41 The State contends that Mr Hickey has advocated support for a terrorist act or violent extremism through comments he has made on line, the making of two videos in particular and from the usage of far right symbols associated with Nazism. In determining whether Mr Hickey *is* a convicted NSW terrorism activity offender under s 10 the court may have regard to the factors set out in s 11 of the THRO Act which are as follows:

11 In determining whether an eligible offender is a convicted NSW underlying terrorism offender or convicted NSW terrorism activity offender, the Supreme Court may take into account:

(a) the views of the sentencing court at the time the offender was sentenced for the offender’s offence, and

(b) the views of the sentencing court at the time a person other than the offender was sentenced for an offence if the person was a co-accused of the offence or was convicted of assisting, aiding, abetting, counselling, procuring, soliciting, being an accessory to, encouraging, inciting or conspiring to commit the offender's offence, and

(c) evidence adduced in the proceedings for the offender's offence or in proceedings against another person for an offence referred to in paragraph (b), and

(d) any relevant terrorism intelligence, and

(e) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in the State or elsewhere), and any pattern of offending behaviour disclosed by that history, and

(f) the results of any assessment prepared by a qualified psychiatrist, registered psychologist, registered medical practitioner or other relevant expert as to the offender's history of behaviour (including any patterns in, or the progression of, that behaviour to date), and

(g) any information concerning the offender that the Court considers relevant (including developmental or social factors and behaviour while in custody), and

(h) any report prepared by Corrective Services NSW, the NSW Police Force or a prescribed terrorism intelligence authority concerning the offender and the offender's associates and affiliations, and

(i) information indicating that current or former associates of the offender have been or are involved in terrorism activities, and

(j) any other information that the Court considers relevant.

42 It is to be noted that these factors overlap to some extent with the relevant factors in s 39 extracted below.

43 As stated above, Mr Hickey accepted, for the limited purpose of the preliminary hearing, that the threshold under s 10(1)(c)(i) was made out as he had made statements advocating support for violent extremism. I am satisfied that the test under s 10(1)(c)(i) of the THRO Act has been satisfied based on the supporting documentation which I have summarised below.

*Fourth statutory precondition: Is the court satisfied to a high degree of probability that the offender poses an unacceptable risk of committing a serious terrorism offence if not kept under the order (s 34(1)(d))?*

44 The parties joined issue with this fourth statutory precondition. The court may only impose a CDO or an ESO if it is satisfied to a high degree of probability that the offender poses an "unacceptable risk" of committing a "serious terrorism offence" if not kept in detention or under supervision.

45 The term “unacceptable risk” is not defined in the THRO Act, although ss 21 and 35 provide that the Supreme Court is not required to determine that the risk of an eligible offender committing a serious terrorism offence is more likely than not in order to determine that there is an unacceptable risk of the offender committing such an offence.

46 It has been held that the phrase “unacceptable risk” should be given its everyday meaning within its context and having regard to the objects of the THRO Act: *Lynn v State of New South Wales* (2016) 91 NSWLR 636; [2016] NSWCA 57 (“*Lynn*”) per Beazley P at [58], with whom Gleeson JA agreed. The test is an evaluative one and requires the exercise of discretionary judgment: *Lynn* at [82] per Basten JA. In *State of New South Wales v Simcock* (Final) [2016] NSWSC 1805 Wilson J observed at [7] that, “[u]nacceptability of risk involves considerations of both the likelihood of the risk eventuating, and the gravity of the risk that may eventuate”.

47 In *State of New South Wales v Pacey* (Final) [2015] NSWSC 1983, Harrison J observed at [43]:

“[43] It is perhaps trite to observe that the assessment of the ordinary meaning of the unacceptability of any risk involves at least notionally the arithmetical product of the consequences of the risk should it eventuate on the one hand and the likelihood that it will eventuate on the other hand. A very high risk of occurrence of something that is insignificant, or a very low risk of occurrence of something that is significant, are both risks of similar or corresponding proportions, but neither risk could be considered to be unacceptable.”

48 Section 39(2) and (3) set out a number of *mandatory* considerations to which the court must have regard when determining whether or not to make a CDO. It has been held that although these factors are *mandatory* on the question of whether to grant the order sought, they are also *relevant* to the unacceptable risk test.

49 Section 39(2) provides that in determining whether or not to make an CDO, the safety of the community “must be the paramount consideration of the Supreme Court.” The other mandatory considerations (in addition to any other matter considered relevant) are set out in s 39(3)(a)-(m) as follows:

(a) the reports received from the persons appointed to conduct examinations of the offender, and the level of the offender’s participation in any such examination,

(b) the results of any other assessment prepared by a qualified psychiatrist, registered psychologist, registered medical practitioner or other relevant expert as to the likelihood of the offender committing a serious terrorism offence, the willingness of the offender to participate in any such assessment, and the level of the offender's participation in any such assessment,

(c) the results of any assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a serious terrorism offence,

(d) any report prepared by Corrective Services NSW or the NSW Police Force as to the extent to which the offender can reasonably and practicably be managed in the community,

(e) any report prepared by a prescribed terrorism intelligence authority relevant to whether the offender can reasonably and practicably be managed in the community,

(f) any treatment or rehabilitation programs and other programs or initiatives in which the offender has had an opportunity to participate, the willingness of the offender to participate in any such programs or initiatives, and the level of the offender's participation in any such programs or initiatives,

(g) options (if any) available if the offender is kept in custody or is in the community (whether or not under supervision) that might reduce the likelihood of the offender re-offending over time,

(h) for an extended supervision order—the likelihood that the offender will comply with the obligations of the extended supervision order,

(i) without limiting paragraph (h), the level of the offender's compliance with any obligations to which the offender is or has been subject while:

(i) on release on parole, or

(ii) subject to a control order, or

(iii) subject to an extended supervision order or interim supervision order, or

(iv) subject to any other order of a court,

(j) the offender's criminal history (including prior convictions and findings of guilt in respect of offences committed in New South Wales or elsewhere), and any pattern of offending behaviour disclosed by that history,

(k) the views of the sentencing court at the time the sentence of imprisonment was imposed on the offender,

(l) any beliefs or commitments of the offender (whether of an ideological, religious, political, social or other nature) that support engaging or participating in terrorism activities,

(m) any other information that is available as to the likelihood that the offender will commit a serious terrorism offence.

### **Preliminary Hearing**

50 I have addressed the statutory requirements for the making of *final* orders under the THRO Act, but only preliminary orders are sought at this hearing and



the test is slightly different. The relevant test for the making of orders following a preliminary hearing (as opposed to the final hearing) is set out in s 38(5) of the THRO Act in mandatory terms:

### 38 Pre-trial procedures

(5) If, following the preliminary hearing, it is satisfied that the matters alleged in the supporting documentation *would, if proved*, justify the making of a continuing detention order or extended supervision order, the Supreme Court must make orders—

(a) appointing—

(i) 2 qualified psychiatrists, or

(ii) 2 registered psychologists, or

(iii) 1 qualified psychiatrist and 1 registered psychologist, or

(iv) 2 qualified psychiatrists and 2 registered psychologists,

to conduct separate psychiatric or psychological examinations (as the case requires) of the eligible offender and to furnish reports to the Supreme Court on the results of those examinations, and

(b) directing the eligible offender to attend those examinations.

(Emphasis added.)

51 Section 41 also provides:

### 41 Interim detention order

The Supreme Court may make an order for the interim detention of an eligible offender (called an ***interim detention order***) if, in proceedings on an application for a continuing detention order, it appears to the Court—

(a) that the offender's current custody (if any) will expire before the proceedings are determined, and

(b) that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order or continuing detention order.

52 The application of this test has been likened to that of committal proceedings.

As Johnson J stated in *State of New South Wales v Sotheren (Preliminary)* [2018] NSWSC 754 at [23]:

"[23] At a preliminary hearing, it is not for the Court to weigh up the documentation or to predict the ultimate result or to consider what evidence the Defendant might call at the final hearing: *Attorney General (NSW) v Tillman* [2007] NSWCA 119 at [98]. Rather, the Court undertakes a task that has been described as being akin to applying a prima facie case test in committal proceedings (as they were before 30 April 2018), taking the Plaintiffs case at its highest: *State of New South Wales v Manners* [2008] NSWSC 1242 at [8]; *State of New South Wales v Brookes* [2008] NSWSC 150 at [13]."

- 53 Similarly, in *State of NSW v Naaman (No 2)* [2018] NSWSC 1329 (“*Naaman (No 2)*”), Campbell J observed (at [48]):

“[48] I think it is necessary to look at the allegations and the documentation put before the Court through the lens of the plaintiff’s case and to take them at their highest when deciding whether the test articulated in s 27(b) has been made good in all the circumstances of the case.”

- 54 On appeal, the Court of Appeal (Basten, Macfarlan and Leeming JJA) in *Naaman (No 2)* described the court’s task at preliminary hearing as follows (at [17]):

“[17] Broadly speaking the test for making interim orders is that the matters alleged in the supporting documentation would, if proved, justify the making of an extended supervision order (s 27). That determination will ordinarily be made in advance of the reports from the psychologists and psychiatrists, and in any event *is a lower standard* than applies to the making of an extended supervision order”.

(Emphasis added.)

- 55 In *State of NSW v Elomar (No 2)* [2018] NSWSC 1034, Rothman J observed that the test does not require “prima facie” proof of the matters alleged and noted:

“[7] ... I should make it clear that the term ‘matters alleged’ does not refer to a conclusion. It refers to matters of fact that, if proved, would be open to lead to a particular conclusion.

[8] To use an example may better illustrate the distinction. If an application for an ISO and/or ESO were to allege that a person was ‘a terrorist’, that would not, in my view, of itself, satisfy the condition prescribed by s 27(b) of the THRO Act. Whether or not the defendant in any such hypothetical proceeding was “a terrorist” is a conclusion that must be based upon facts that are adduced.

[9] In such a circumstance, it is necessary for the State of New South Wales to allege certain facts, which, if proved, would lead to a conclusion that would justify the making of an ESO...

[10] As a consequence, the ‘matters alleged’ must be facts or based on facts that are, firstly, capable of being proved; and, secondly, such that, if proved, they would satisfy the Court that an ESO should or would be made.”

- 56 Similarly, in *State of NSW v Golding (Preliminary)* [2018] NSWSC 1041, R A Hulme J at [17] observed that:

“[17] It is not for the Court to weigh up the documentation, or to predict the ultimate result, or to consider what evidence the defendant might call at the final hearing: *Attorney General for New South Wales v Tillman* [2007] NSWCA 119 at [98]. It is a task that has been described as being akin to applying a prima facie case test, taking the plaintiff’s case at its highest: see, for example, *State of New South Wales v Brookes* [2008] NSWSC 150 at [13]

(Fullerton J); *State of New South Wales v Manners* [2008] NSWSC 1242 at [8] (Johnson J).”

decline to make an IDO or ISO would arise other than in an exceptional case.”

57 Given that the mandatory considerations for both a CDO and an ESO are broadly the same and that such considerations are also relevant to the unacceptable risk test, I propose to summarise the material before me on this application under headings corresponding to these mandatory considerations, as applicable. I will also summarise other matters arising from the material which I consider to be relevant.

58 I note that some of the mandatory considerations set out in s 39(3) are not relevant at this preliminary stage and otherwise did not arise on the material: s 39(3)(a), (b), (e), (f). Otherwise, s 39(3)(g) has been addressed in my consideration of the Risk Assessment Report (“RAR”) and Risk Management Report (“RMR”) below.

#### *The defendant’s personal circumstances*

##### *Background*

59 Mr Hickey was born in Melbourne in 1975. He has provided inconsistent accounts of his childhood. Some reports note his disclosure of specific incidents of domestic violence within his mother’s home including him physically defending her from one of her boyfriends, his mother’s partners “physically handling” him and his brother at the encouragement his mother, he and his brother being pushed and locked in a room while his mother engaged in physical intimacy with her partners in the lounge room and going for days without an adequate meal.

60 Despite this history, Mr Hickey told the author of the RAR that his childhood was “normal”. He denied feeling deprived in any way. He expressed dislike for attempts to blame problems in adulthood on childhood experiences and compared his childhood favourably to others.

61 Mr Hickey reported that his mother left the family when he was five years old with he and his younger brother accompanying her but he came back to live with his father soon afterwards. He described his parent’s divorce as acrimonious but denied being exposed to significant violence reporting that

physical discipline was proportional. He believed that the fact that he moved between his parent's houses over his teenage years contributed to his behavioural problems in his teens. He reported a difficult relationship with his mother until he was about 20 years old when it ceased altogether. That relationship was only recently re-established after approximately 20-25 years of estrangement. He reported that his anger towards his mother was not entirely resolved but that he loves her now.

62 Mr Hickey now reports getting on well with his father, who was a strict "by the book" man and that he often spoke of his mother in negative terms. He described that his mother was dishonest and often exaggerated his teen years problems and also abused alcohol. He believes that his self-described "misogynistic" attitude towards women including lack of trust and disrespect for the authority of women related to his relationship with his mother during his development years and from his father's "constant badmouthing" of her.

63 Mr Hickey's father is 76 and presently resides in Melbourne. Mr Hickey has described his relationship with his father as "strained but strong". He has a younger brother who is a locksmith who resides in Melbourne, but he is not currently in contact with him. His mother is in her late 60s and also resides in Melbourne.

64 Mr Hickey had some minor matters in the Children's Court and a few minor convictions as an adult before moving to Queensland as an adult. He is an electrician by trade. He ran a successful business in Brisbane called "Smerff Electrical" employing up to 12 people. As stated above, the first indication of the defendant's extreme right-wing beliefs is from 3 August 1996, when police observed racist messages on his phone and Mr Hickey stated that he was a neo-Nazi white supremacist.

65 On 16 November 2014, Mr Hickey married Elena Polovnikova, a Russian woman born in Novosibirsk. They married in Brisbane. They have one child, a daughter named Angie who is now aged 7 years. Both his wife and daughter returned to Russia in 2019 apparently because of Mr Hickey's difficulties with Queensland police which, as will be seen below, started in about 2017.

66 The evidence as to the current status of his marriage was unclear. Although Mr Hickey states that his wife and daughter have been denied a visa to return to Australia, there was no evidence before the court as to whether that is the case or whether his wife has made any effort to come to Australia or even wants to come. In some of the material put before the court Mr Hickey refers to her as his ex-wife but there is also material to suggest that he wants her and their daughter to return to Australia.

*Criminal (and other court) history: s 39(3)(j)*

67 Although Mr Hickey has not been convicted of any serious offences of violence, he does have a criminal history. He has served short periods in custody since 2019 in Queensland for contempt of court and breaching an AVO and his current sentence in New South Wales is in relation to the possession of caltrops (explained below).

68 Mr Hickey had some minor matters in the Children's Court in Victoria involving graffiti and minor theft in 1990 and 1992. In 1994, he was fined \$200 with a conviction not being recorded for theft and obtaining property by deception. In 1996 an apprehended violence order was issued to protect a family member from him. In 1998, he was fined without conviction for cultivating a narcotic plant and in 2003 he was convicted and fined for possessing an explosive without being licensed, possessing a long arm unlicensed weapon and possessing a handgun without a licence.

69 Mr Hickey moved from Victoria to Queensland sometime in the mid-2000s. He received his next conviction in Brisbane in 2009. He had shot some airgun pellets into a neighbour's shed and when police attended, he gave them a false name. He was charged with dangerous conduct with a weapon and obstructing a police officer. He was fined \$300, and no conviction was recorded.

70 In 2010, Mr Hickey was dealt with for fraud, publishing or possessing instructions for producing dangerous drugs, unlawful possession of restricted drugs and possessing restricted items. Queensland police had executed a search warrant at his residence and found literature and books on how to use and build weapons as well as copious literature and books on white supremacy and support for Hitler and the Nazi regime. Some documents in other people's

names were located as well as lock picking equipment, encrypted USB memory sticks and over 300 Viagra tablets. No conviction was recorded, and he was fined \$1,100.

- 71 In 2014, the AFP approached Mr Hickey at the customs arrivals hall at Sydney airport. He was found to be in possession of two fake drivers' licences which he had purchased in Thailand. He was dealt with in New South Wales under s 10A (there was no conviction or other penalty).
- 72 In 2016, Mr Hickey was dealt with for importing four cans of pepper spray and five laser pointers into Australia from Malaysia whilst falsely stating on his incoming passenger card that he was not bringing in any prohibited imports. Following an appeal, he was fined \$5,000.
- 73 In 2017, Mr Hickey was fined \$500 without conviction for possessing pipes in connection with the commission of a drug offence. Also, in 2017, he was fined \$500 for publishing or possessing instructions for producing dangerous drugs (cannabis).
- 74 Although Mr Hickey held his extreme right views during the above period, he had never been convicted of any serious offences. The turning point for Mr Hickey appears to have come in 2017.
- 75 In 2017, Siobhan Dash commenced investigations against Mr Hickey as part of her role as an investigator with the Office of Fair Trading. In the execution of her duties, Ms Dash executed a warrant at Mr Hickey's home address to investigate whether he had installed CCTV cameras unlawfully (although the facts were somewhat unclear it would seem that you require a particular security licence to do so which he did not have). As a result of this investigation Mr Hickey posted numerous online videos about Ms Dash and placed "wanted" posters about her. In 2018 he was charged with stalking her. A restraining order was subsequently imposed which included an order that he not post anything on the Internet or public space about her.
- 76 After the restraining order was imposed Mr Hickey sent a number of text messages and emails to Ms Dash which contained abusive language, including calling her a "thief" and "parasite", and stating "this shit won't go away". He

also sent an email stating, “have you googled yourself lately?”. A Google search led to the discovery of a page on the Smerff Electrical website where Ms Dash was depicted with the words “Bulldyke” and “nasty career labour hack” near it. A post on that page referenced a cash reward for information about Ms Dash. Mr Hickey also placed a poster in Ferny Hills which depicted Ms Dash, her name, and a cash reward offer for information. He was, as a consequence, convicted of unlawful stalking. He was subsequently convicted of breaching that restraining order as a result of a video he posted online concerning Ms Dash.

77 On 25 January 2018, Mr Hickey was sentenced in relation to setting “man traps” on his property. He had attached razor blades at spaced intervals on the interior of his property fence. When a number of police officers jumped over his fence to execute a warrant one of the police officers cut his finger requiring stitches. He was also dealt with for unlawful stalking (sending text messages and emails to Ms Dash).

78 On 8 April 2018, Mr Hickey was convicted of using a carriage service to harass or cause offence. Those offences were in fact committed in November 2015. He was sentenced to 6 months and 4 months’ imprisonment respectively and released on a recognizance to be of good behavior for a period of 5 years with a probation period of 24 months on both charges. These convictions followed phone calls made to two Islamic educational institutions and an email attaching anti-Islamic images which contained the following text:

“After the weekend in Paris you better pack your things and go home to the desert. You have awakened the wrath of the sleeping giant. European men with our rockets and bombs and modern armies shall march on your pathetic pig fucking prophet Mohammed in his shithole filthy capital of Mecca. Mecca, medina, Mosul, every last Muslim city on earth shall be but a black stain on the earth .

By the time were finished it will be illegal to even say the word Islam or Muslim anywhere on earth.

You filthy desert cockroaches have pushed us once too often. Fuck Mohammed. Fuck Allah. Fuck you filthy bearded fucks

Mohammed fucks pigs in hell. You will join him.”

79 This is the only occasion on which Mr Hickey has ever been convicted of a matter connected with his far right views.

- 80 On 16 May 2018, Mr Hickey sacked an employee which led to him becoming involved in proceedings for unfair dismissal in the Fair Work Commission and the Federal Circuit Court. He was ordered to pay compensation of \$11,400. He appealed the order, but his appeal was dismissed in March 2019. In addition to failing to pay the \$11,400 ordered by the FWC, Mr Hickey underpaid the worker \$5,504 in wages and \$482.93 in superannuation in contravention of the Electrical, Electronic and Communications Contracting Award 2010.
- 81 On 13 February 2019, Mr Hickey breached his bail condition and received a suspended sentence of 12 months
- 82 On 1 April 2019, Queensland police executed another search warrant at Mr Hickey's residence in Queensland in relation to a breach of the restraining order and traffic - related offences. They seized his mobile telephone. Later analysis of the phone located the video "Ebba's Revenge". It depicts the Christchurch terror attack on 15 March 2019 in which an Australian man killed 51 people and injured 40 others in mosques. Mr Hickey was arrested and charged with five counts of using a carriage service to menace/harass/offend in relation to his dissemination of that video.
- 83 Mr Hickey had edited the "Ebba's Revenge" video by inserting text, video and still images. I have not watched this footage as it was not suggested that I needed to. There are descriptions of it in the material tendered on this application. The video has been edited to appear like a videogame. Mr Hickey forwarded the video to five people using the messaging application Signal, saying "Share this by Signal or Secret text only. It's video made by me LOL check it out" and "Don't share by text Signal is ok. Try and get it out to Cunts". He also sent the video to his wife, saying "its banned everywhere so I produced a funny video game version with music and scoring points... I think it should be on television... everyone can sing along as he wastes kebabs... fun for all the family."
- 84 On 12 June 2019, Mr Hickey appeared at the Richland Magistrates Court. His suspended sentence was revoked, and he was sentenced to custodial terms. During the execution of a search warrant at his address police located amongst other things two machetes, a metal baseball bat and a bundle of approximately



30 arrows. Investigators also observed the swastika symbol being projected from the lights under the doors of his BMW. They also located a semiautomatic Wilson combat 1911 handgun and a holster and 50 x 45 calibre rounds for the weapon concealed in a cavern in the kitchen. Given that he had already spent 79 days in custody by that date, he was sentenced to a non-parole period to expire that day and was released to parole on that date.

85 At around this time Mr Hickey and his family moved over the border to Kingscliff in NSW. On 23 July 2019, Mr Hickey wrote to the Roma Magistrates Courts stating, "I do not intend to return to Queensland unless we have a federal mandate to seize the land and declare it a new region of Northern New South Wales."

86 On 28 August 2019, Mr Hickey was arrested at a supermarket in Kingscliff. A warrant had been issued by the Brisbane Magistrates Court for revocation of parole (presumably for leaving Queensland). His car was searched on that day and numerous items relevant to the index offences were located. He was taken to Tweed Heads Local Court and extradited to Queensland.

87 On 19 September 2019, Mr Hickey appeared in the Supreme Court of Queensland at Brisbane on a charge of contempt of court and was sentenced to 9 months imprisonment. He had made contemptuous statements regarding the Queensland magistracy. Douglas J held that he had engaged in scurrilous abuse and making statements which incite misgivings as to the integrity, propriety and impartiality brought to the exercise of judicial office.

88 On 9 October 2019, Mr Hickey was charged with the index offences in New South Wales resulting from the search of his vehicle in Kingscliff on 28 August 2019. He was serving a sentence in Queensland at that time, so a warrant was issued in respect of those offences on 1 November 2019. The details of these index offences are considered below.

89 On 9 December 2019, Mr Hickey appeared in relation to breaches of a recognisance release order imposed on 18 August 2018 in relation to 2 charges of using a carriage service to menace/harass/offend relating to his conduct in November 2015 (see above at [80]). That recognisance order was revoked and in lieu thereof he was sentenced to 4 months imprisonment to

commence on 18 January 2020. He had also breached the good behaviour bond.

- 90 On 7 August 2020, Mr Hickey was released on bail in Queensland on Commonwealth charges under the *Civil Aviation Safety Regulations 1998* in relation to conduct in 2017 in 2018 and a charge of breaching a restraining order contrary to the *Criminal Code*.
- 91 On 12 January 2021, Mr Hickey was found guilty of an offence of breaching a restraining order in the Magistrates Court in Brisbane pertaining to conduct in July and August 2019. He was sentenced to a period of 3 months' imprisonment which was suspended for a period of 6 months.
- 92 On 9 May 2021, anomalies were detected in relation to Mr Hickey's electronic monitoring device. He subsequently emailed a police officer attaching a guide explaining how he had disabled it.
- 93 On 10 May 2021, Mr Hickey's vehicle was detected in Victoria with stolen numberplates on it.
- 94 On 12 May 2021, Mr Hickey failed to appear at the Brisbane Magistrates Court and a warrant was issued for his arrest.
- 95 On 14 May 2021, Mr Hickey was arrested in Bayswater in Victoria by the Victorian Counter Terrorism Security Investigating Unit and Special Operations Group.
- 96 On 17 May 2021, the Brisbane Magistrates Court issued a warrant for Mr Hickey's arrest in relation to breaches of bail.
- 97 On 18 May 2021, Mr Hickey was transferred to custody in New South Wales.
- 98 On 19 May 2021, Mr Hickey was charged with wilful damage (the removal of his electronic monitoring device), breach of bail conditions (in relation to his residence condition and leaving Queensland) and dishonest application of property of another (driving the stolen registration plates attached to his vehicle).

- 99 On 6 July 2021, a warrant was issued in Queensland to apprehend Mr Hickey for failing to surrender into custody in relation to a charge of breaching his restraining order.
- 100 On 7 July 2021, a warrant was issued in Queensland to apprehend Mr Hickey for breach of bail.
- 101 On 24 September 2021, Judge Jarrett of the Federal Circuit Court in Family Court observed that Mr Hickey demonstrated a “wilful disregard” of authority and the integrity of the Fair Work Commissions authority and integrity and had shown “disregarding contempt” and “open contempt” for the Fair Work Commission: *Fair Work Ombudsman v Hickey (No 2) [2021] FedCFamC2G 80*. He was fined \$30,000 for this contempt.

### **The index offences**

- 102 The index offences pertain to Mr Hickey’s development and production of his “HikDeploy” product which is a “pursuit prevention device”. The HikDeploy is a box containing caltrops (road spikes) which can be attached to the underside of a vehicle. Mr Hickey promoted the HikDeploy as a way of evading a police pursuit. It would appear that he did so as a way of getting revenge for police who he believed made his life unbearable in Queensland.
- 103 The first record of the HikDeploy in the evidence is from mid-2018, when he posted videos of the HikDeploy on the “sqiish sqash” YouTube account. On 10 August 2018 the Facebook user “Henrii Deploii” (a username linked to Mr Hickey) posted a video of the HikDeploy stating “HikDeploy remote control pursuit prevention module...for when stopping is not an option.” On 10 October 2018, the following post appeared on youtube

“HikDeploy is a Clip on Pursuit Prevention module that can be called on to drop hardened steel road spikes behind your car. Securely fixes to any vehicle in seconds.

... If some angry motorist is trying to road rage you – fix his little red wagon with HikDeploy. Push the button hear the click and watch his anger turn to tears as his tyres are shredded.

Could possibly also be used to stop those stupid signed up cars with flashing red and blue lights The ones that sound like wiiiiii woooo wiiii wooco. They didn’t seem friendly to me so I’ve always just HikDeployed them and they seem to leave me alone now.

Can't be too careful they might have been trying to rob me or steal my HikDeploy. I don't really want to find out what those cars are all about.

...

HikDeploy: When stopping is not an option. We'll get you home."

104 On 21 March 2019, the user "Hik Deploy" posted a video entitled "HikDeploy IX 9.21 The Quockenator" which included the following content by reference to the running time of the video:

- (a) 1:25 min – a caption appears stating: "So: Police are not allowed to pursue speeding vehicles But they do so anyway. Therefore: Hik Deploy is a law enforcement device. It forces police to comply with the law and halt their illegal pursuit."
- (b) 2:50 minutes – in response to the Channel 9 report describing a "manifesto" on the Hik Deploy web site, a caption appears "Manifesto? I am not a Unabomber. The device does require an explanation. It could be construed as irresponsible. Until cause and effect is explained."
- (c) 4:17 minutes – a caption reading "you suggesting we go through the proper channels to resolve it?" The video then plays audio recordings of Hickey's District Court appeal in 2018.

105 On 31 March 2019, on Vimeo the user "Hik Deploy" posted a video demonstrating the use of the HikDeploy entitled "HikDeploy V9.6 The Rusher of Bacon". It contains the following content by reference to the running time of the video:

- (a) 0:55 minutes – A voice over states: "when you need to leave the scene of your next hate crime, use HikDeploy".
- (b) 3:15 minutes – a hand inserts both black and white spikes into the device and states: "[w]e keep the white spikes and the black spikes separated. It's important to understand that the white ones have a very generous welfare program, hotter chicks and a higher standard of living. If the black ones found out, they'd be over there in a second and messing up all the shit on the white side. We don't want that."
- (c) 3:32 minutes – a stock radio voiceover states "you are listening to the smooth sound of the racial holy war".
- (d) 3:47 minutes – a man displays the sharpness of the spikes, using a jelly cup to represent a police vehicle, he slams the jelly cup into the spike before continuing to smash the cup with a hammer and screwdriver.

106 In October 2019, following the search in Kingscliff, Mr Hickey was charged with the following index offences: possess identity to commit etc indictable offence

(seq 1); unlawfully possess thing resembles Australian driver licence (seq 2); three counts of possess prohibited drug (seqq 3, 6 a 7); manufacture a prohibited weapon without a permit (seq 4); possess digital blueprint for making prohibited weapon (seq 5); possess or use a prohibited weapon without permit (seq 8); and manufacture prohibited weapon without permit (seq 9). These offences largely pertained to the HikDeploy.

107 Following his plea of guilty to sequences 1, 4, 5 and 8 on 31 May 2021, Mr Hickey was sentenced in the Local Court on 13 July 2021 to an aggregate sentence of 3 years' imprisonment in relation to these charges. In relation to the remaining charges, he received s 10A bonds with no other penalty.

108 Following his appeal against sentence to the District Court, the charges were remitted to the Local Court. The question arose as to whether the HikDeploy boxes (subject of seqs 4 and 5) met the definition in Schedule 1 of the Weapons Prohibition Act 1998. Mr Hickey was granted leave to withdraw his plea in relation to those charges and they were withdrawn on 22 November 2021.

109 With respect to the remaining charges, Mr Hickey was re-sentenced on 10 December 2021 as follows:

- (1) Manufacture prohibited weapon without permit (seq 9) – 10 months' imprisonment commencing on 13 May 2021 and expiring on 12 March 2022;
- (2) Possess identify info to commit etc indictable offence (seq 1) – 3 months' imprisonment commencing on 13 May 2021 and expiring on 12 August 2021;
- (3) Possess or use a prohibited weapon without permit (seq 8) - 18 months' imprisonment with a non-parole period of 10 months commencing on 13 May 2021 and expiring on 12 March 2021.

110 Mr Hickey appealed to the District Court against the sentence. He was re-sentenced by McLennan SC DCJ on 21 January 2022 as follows (by the time the appeal was heard the sentence of imprisonment in relation to seq 1 had expired):

- (1) Possess or use a prohibited weapon without permit (seq 8) – his non-parole period was reduced from 10 months to 9 months to date from 13 May 2021 and expiring on 12 February 2022. His head sentence of 18

months' imprisonment commencing on 13 May 2021 and expiring on 12 November 2022 remained intact.

- (2) Manufacture prohibited weapon without a permit (seq 9) – fixed sentence of 10 months' imprisonment was reduced to 9 months to date from 13 May 2021 and expire on 12 February 2021.

*Views of the sentencing court: s 39(3)(k)*

111 Judge McLennan considered that the caltrops carried with them the risk of very serious injury or death for other road users. Although the appeal against sentence was allowed having regard to the impact of the COVID-19 outbreak, his Honour's remarks about the nature of the offending were consistent with the sentencing remarks at first instance, which included the observations that Mr Hickey represented a "real risk to the community" and that the weapon he possessed "posed a genuine risk to the public" and that the spikes, if deployed "would have represented a real risk to human life."

*Recent parole history*

112 Following his re-sentence, Mr Hickey was due to be released at the end of his non parole period on 12 February 2022. Given that his sentences were of 3 years or less, pursuant to s 158 of the *Crimes (Administration of Sentences) Act 1999*, he was taken to be the subject to a statutory parole order. On 11 February 2022, the State Parole Authority (SPA) revoked that statutory parole order. In revoking his parole, the SPA advised Mr Hickey that it had acted pursuant to s 159C(2) of the Act on the basis that Mr Hickey was known to the SPA to be a "terrorism related offender" and that he " ... may engage in violent extremism". As well, the SPA stated that it had revoked Mr Hickey's parole pursuant to s 130(1)(a) because it was satisfied that, if released, Mr Hickey would pose a "serious identifiable risk to the safety of the community" and that such "risk cannot be sufficiently mitigated by community corrections officer directions or changing parole conditions". Mr Hickey was notified of the revocation of his parole by a letter dated 17 February 2022 from the Secretary of the SPA: *Hickey v State Parole Authority* [2022] NSWSC 1389.

113 Although it was never expressly stated, it is to be presumed that it was Mr Hickey's support for Mr Tarrant which led to this classification.

- 114 A review hearing was held on 15 March 2022. On 5 April 2022, the SPA declined to rescind the revocation order on the basis that Mr Hickey had previously made statements advocating support for violent extremism, that it had become aware that Mr Hickey might engage in violent extremism, and that if released Mr Hickey would pose a serious identifiable risk to the safety of the community and the risk cannot be sufficiently mitigated by community corrections officer directions or changing parole conditions.
- 115 The SPA observed that “[i]t is clear that Mr Hickey has made statements which support and justify violence, terrorism and violent extremism and he has portrayed as humorous, acts of brutal racially motivated violence.” The SPA considered that “[s]trong political views with intemperate language are not explanatory of the offender’s conduct” and that it was “affirmatively satisfied that the offender may incite others to engage in terrorist acts or violent extremism.”

#### **Mr Hickey’s beliefs over the years**

- 116 As stated above, police first became aware of Mr Hickey’s views in 1996. In 2011, during a baggage examination at Sydney Airport, it was recorded in an Information Report in the supporting documentation that Mr Hickey:

“... has strong beliefs in government conspiracies including the Port Arthur massacre and the 9/11 terrorist attacks. Passenger also has strong feelings about gun controls, law enforcements and airport security screening. Passenger also stated that All terrorists are Muslims and there are no white Christian terrorists and that All towel heads should be banned from flying.”

- 117 Mr Hickey started posting on the “Stormfront” forum in 2009 under the username “Aussie Earl Turner”. Stormfront is a “far-right and neo-Nazi web forum established in 1996 considered by terrorism academics to be a forum for spreading racism, hatred, conspiracy theories, and other far-right extremist narratives.” Its users included Anders Breivik, the extremist responsible for the 2011 terrorism attack in Norway that killed 77 people, and its founder was a former Grand Wizard of the Ku Klux Klan and a member of the USA Nazi Party.
- 118 I was provided with numerous posts made by Mr Hickey on Stormfront under the username “AussieEarlTurner” between 2012 and 2015. I do not consider it necessary or appropriate to reproduce them at length. Mr Hickey calls

repeatedly for “whites” in Australia, the UK and the US to resist the corruption of society by all manner of minority groups: primarily Muslims, but also Jews, Africans, African Americans, Asians, women, communists and non-heterosexuals. His posts also targeted “whites” “complicit” in this corruption. Mr Hickey talks in crude and violent terms, calling for the widespread hanging and lynching of members of these minority groups. In his view, “Kristallnacht” should be an annual event. He expresses support for specific events – for example, on 17 April 2015, praising the arson of a mosque in Toowoomba – as well as portraying grandiose ideas of ethnic cleansing and race war.

- 119 Mr Hickey appears to have attended some events frequented by other Stormfront members, including a Reclaim Australia rally. He was “disappointed” with aspects of a United Patriot Front rally in Melbourne in 2011, saying:

“I was disappointed with a lot of aspects of UPF rally Melbourne. First I am a bit embarrassed at the way Blair and other assorted leaders tried to claim over and over that 'we're not racist'. Forget that s\*\*t Blair. We are racist. I believe white Europeans have a right to govern and dominate the countries we founded. No other race has a right to high political power in our nations. No other race is allowed to infiltrate and poison the minds of white youth. No other race should be allowed to live in our lands in sufficient numbers to pose a threat to us EVER.

Second. Guys came from all over Australia to back up Blair and his mates in Melbourne on Saturday. One guy came home early from holiday in Bali to be there. I came from another state, and there were many others. We were not even acknowledged by any of them.

The poor organisation. There were at least 3 separate patriot groups scattered through the city that day making easy pickings for antifa scum. If we had of had better organisation, cohesion and prior planning we all could have met earlier and pushed into the city as a formidable fighting force. As it was the 50 or so with our main group could have smashed the red scum alone. If we had of linked up with all, the 200 + white fighting men would have made the Reds \*\*\*\* bricks The Reds would have been saved only by the police. Even then 100 + guys could have skirted the police lines and ambushed the Reds from behind. The red scum will only be defeated by force. They need to be beaten badly a few times to learn who owns Australia. I will talk to UPF leadership next time I'm in VIC to see if we can't work out a better plan next time.”

- 120 Mr Hickey has also operated a number of different Facebook accounts. One of them was in the name of his business “Smerff Electrical”, one was in the name “Henrii Deploii” to promote HikDeploy and another was in the name “Bernard Christian. Mr Hickey also operated a Pinterest account with the username “HikDeploy”.



- 121 Much of the material on these platforms is similar to other postings. The same memes appear elsewhere in the material. They include the Brenton Tarrant meme portraying Tarrant as a “high elf from Valinor”.
- 122 In addition, Mr Hickey operated an “Air Conditioning Expert” account. Several images are of his wife Elena, and in one post she is identified as “the experts wife.” He describes her as “Exclusive property of White European men and a beauty which must be defended from the Jews attempt to breed out of existence 1488.” In another post he says “We will destroy the predatory migrations against Europe by waging war in all corners of the Earth as we see fit. The destruction of Europe's enemies is a sacred ritual.”
- 123 Mr Hickey has used a number of websites to promote his views. There is a large amount of content including anti-immigration, racist, misogynistic, anti-government, and homophobic content. I have waded through a significant amount of this material. It is very repetitive.
- 124 On the Smerff Electrical website, Mr Hickey displayed a banner featuring the Pepe the Frog meme wearing an SS lapel and standing outside the gates of Auschwitz and posted videos and memes consistent with his views. The expert evidence is that “Pepe the Frog has come to represent bigoted, anti-Semitic, and white supremacist themes. The addition of a SS uniform and gates of Auschwitz in this example clearly identifies it as an explicitly neo-Nazi anti-Semitic symbol.”
- 125 This website material was captured using the Wayback Machine. The posts on the Smerff Electrical website included that on 21 November 2014 Mr Hickey made a post entitled “the Invasion of Europe continues” which commenced “How long will we sit idly by and allow millions of able bodied, military aged, foreign men to enter our lands? Why is our traitorous government aiding this obvious invasion of our territory? Why aren’t white men manning machine gun posts on every border, defending... .” Another post (captured on 31 January 2019) is entitled “Fair Trial at Beenleigh Magistrates Court? Lol.” The post culminates with the statement “Cockroaches have more moral fibre than most of our professional legal administrators. Some of them need to be made an example of.”

- 126 A number of other posts were captured on 31 January 2019, but it is not clear to me when they were posted. They all express views in a similar vein.
- 127 Police seized an iPhone X and an iPhone 6S from Mr Hickey on 28 August 2019 and performed a Cellebrite extraction. The iPhone X contained images consistent with memes that Mr Hickey posted on social media sites. There are a number of images with text supportive of Hitler and promulgating the theory that the world is now in the “Jew World Order”. There is an image of Brenton Tarrant with the Nike “Just do it” logo and the text “Believe in something. Even if it means sacrificing everything.”
- 128 The web history on the phone shows that Mr Hickey searched for content concerning the “adl” (the Anti-Defamation League) and police training. He visited a range of sites consistent with his views, including the XYZ, The Daily Stormer and Stormfront. His bookmarks included “The Great Replacement: The Manifesto of Brenton Tarrant – the New Zealand Mosque Shooter – European Freedom Publications”, Stormfront, and HikDeploy videos.
- 129 Screenshots from the iPhone X feature pro-Nazi images and iconography, content concerning the “Extinction of the European Population ... History of a Civilization’s Suicide”, anti-Semitic content, and videos of HikDeploys and their components.
- 130 The iPhone 6S appears to have been used by both Mr Hickey and Elena. There is a screenshot on the phone of an email from Mr Hickey to Andrew Anglin. Mr Anglin is the founder of the far-right Neo Nazi website The Daily Stormer. The Daily Stormer article published on 1 March 2017 described Smerff Electrical as “The Daily Stormer’s sole corporate sponsor”. The email to Mr Anglin reads:
- “Andrew just read your valentines piece. I know exactly how you feel. 2 years ago I was where you are.
- Now I am married to a russian woman who hates ni99ers just as much as me and I didn’t have to teach her this
- I am going back to russia in august if you wish to come. I can tell you how to tee up potential women and catch one who’s hot like my wife. I’ll pay for your flights You’ve done enough for our people.
- Here’s photos of my wife and her friends If you want to come to russia you need to start preparing soon and I’ll arrange the travel.

My wife is the blonde. Hail victory.”

131 According to the translation of the Cyrillic text, the email is dated February 2015.

*The Inquiry into Extremist Movements and Radicalism in Australia*

132 On 28 June 2021, the XYZ website posted a submission prepared Mr Hickey to a public enquiry into Extremist movements and Radicalism in Australia. I note that the XYZ website styles itself as catering “to the needs of the population of Australia which believes in free speech, free markets, and selfconsciously acknowledges our place in Western civilisation and culture”. Mr Hickey’s submission published on the XYZ website included the following:

“I feel I am in a position to speak with some experience on these matters as I have been labelled a ‘right wing extremist’ by both the state and federal government for some time. I believe my categorisation as an extremist is both unfair and ill-informed. This categorisation has caused me huge financial, emotional and productivity losses, without justification. I have been refused licenses, had existing permits / licenses removed or revoked on the most trivial of grounds I have been harassed extensively by Queensland police, specific instances will be detailed at the end to avoid diverting the overall direction of this submission. I have been subject to investigation / audits by more government organisations than any person should ever be subject to. It’s no coincidence that my problems with the government started at the same time as my political positions became public knowledge.

...

To be clear on this, although I shouldn’t have to justify my politics to you or anybody else, I don’t hate or dislike anybody because of the colour of their skin. I make informed decisions on who I want to socialise with, work for or live around because I value my property, my safety and that of my family. Not all Africans are going to rob my house – of that I am certain. I can be equally certain that once a bunch of African families are living in my street, there will be increased risk of vandalism, theft, violence and anti-social behaviour. These people do not think like us, behave like us or even want to. That in itself isn’t wrong, but it is an observable fact.

...

That doesn’t mean I hate Africans, it means that I have observed their behaviour and decided that it’s better not to be around them. I don’t buy a pit bull terrier for my daughter as a pet – why? Not all pit bulls are going to maul her without provocation. What I do know is that the risk of attack from a pit bull is far higher than that of a Labrador. Local councils agree and place restrictions only on this breed of dog. The height of racism. If the diversity myth about behaviour patterns not being genetic were true, councils would not need to have these laws

...

Further to that I believe it is a warped sense of equality that drives these people to inflate the perceived risks of terrorism by right wing offenders. They are so attached to their equality beliefs that they just know if Arabic Muslims are doing terrorism this frequently, then everyone else must be doing it too. The only reason they haven't witnessed any right wing terrorism incidents in Australia is because the government is not spending enough to root them out. Here we see the common problem modern liberals have where reality doesn't line up with their world outlook. So they seek to change or modify real world data to conform to what they believe should be happening. There isn't any right wing extremist related fatalities in Australia right now, so the solution is to create some. They simply move the goal posts, or change the criteria for the definition of right wing extremist so as to inflate the numbers, and reinforce their theories. Where once an extremist of any political spectrum was defined as someone who had used threats or violence to push a political agenda, now all one needs to do to be labelled a right wing extremist is say the words, 'I think we need to re-think this country's immigration policy.' Perhaps, you might try saying: 'I prefer that my children grow up in a mostly white neighbourhood, for their own safety.' Both observations are logical, rational and supported by all the evidence. Yet none of you dare say it in public."

### *Affiliations*

- 133 Although Mr Hickey is not aligned with any particular group, he has been in contact with other people who share similar beliefs. In 2019, he wrote to Mr Blair Cottrell from prison asking for help. Mr Cottrell is a former leader of the "United Patriot Front". In that letter Mr Hickey said, "I really need some help from a dedicated, smart patriot and yours was the first name come to mind." Mr Cottrell is considered by Australian terrorism academics, segments of the media, and Australia's Race Discrimination Commissioner as a neo-Nazi and active leader in the Australian far-right movement. In September 2017, Blair Cottrell was found guilty by a magistrate of inciting contempt against Muslims after he and two other UPF leaders had enacted a video of a fake beheading to protest the building of a mosque in Bendigo. He was fined \$2,000.
- 134 Mr Hickey has also historically provided financial support to "The Daily Stormer", which is a far-right neo-Nazi website founded and edited by Andrew Anglin. In an article on the Daily Stormer dated 1 March 2017 Mr Hickey is identified as "The Daily Stormer's sole corporate sponsor." In the article Mr Hickey identifies himself as "sponsor[ing] the Stormer". In addition, Mr Hickey wrote to Mr Anglin about going to Russia with Mr Anglin. In April 2019, in a letter to Paul Hickey, Mr Hickey asked him to contact Mr Anglin on his behalf.

### Results of any risk assessment: s 39(3)(c)

135 Section 39(3)(c) of the THRO Act provides that, when determining whether to make a final detention order, the Court must have regard to the “results of any assessment as to the likelihood of persons with histories and characteristics similar to those of the offender committing a serious terrorism offence”.

136 Ms Maggie Cruickshank provided a Risk Assessment Report dated 1 August 2022. She is a Senior Psychologist in PRAXIS (Psychologist, Proactive Assessment and Intervention Service) in Countering Violent Extremism (CVE) Programs within NSW Corrective Services. The RAR was reviewed by the Manager of CVE Programs, Katrina Czerkies. Ms Cruickshank conducted her assessment on the basis of interviews with Mr Hickey on 21 and 22 June 2022 that lasted approximately eight hours and documentary material provided. The Executive Summary of her report includes the following:

“Mr Hickey presents as an individual who has maintained an extreme right wing ideology for what appears to be the duration of his adulthood. The ideology has included mistrust of government authorities and a strong anti-immigration white supremacist stance. Mr Hickey’s online activities, including the decision to sponsor a far right website under his business name, led to media attention. Mr Hickey formed the belief that he has been unfairly targeted and harassed by various government authorities due to expressing his ideological beliefs.

Mr Hickey subsequently developed grievances towards various government employees and organisations. He perseverated on publicising his version of events online, despite sanctions. He has reported he was motivated to develop a weapon the ‘HikDeploy’ pursuit prevention device (the subject of current NSW convictions) out of a desire for revenge. Additionally, Mr Hickey has a long history of other weapons possession and use.

Mr Hickey’s ideological beliefs have manifested in behaviours that resulted in convictions including three counts of Use carriage service to menace, harass and offend, which related to his contact with two Islamic schools via phone and email in 2015. In April 2019, Mr Hickey was found with a graphic video depicting the Christchurch massacre that had been edited with text, still images and voice-overs. There is currently an outstanding charge in Queensland for the use of a carriage service to menace, harass and offend relating to this matter.

Mr Hickey was interviewed for the purpose of this assessment. He was observed to attempt to sanitise and minimise the extent of his beliefs and behaviours which were inconsistent with the volume of collateral evidence provided. The VERA-2R and TRAP-18 were used to assess Mr Hickey’s risk of *violent extremism, politically motivated violence and terrorism*. Mr Hickey was assessed as being in the **Medium-High risk** range of violent extremism, politically motivated violence or terrorism. The TRAP 18 indicated that Mr Hickey has been assessed as an individual that requires **ongoing monitoring**

**and active case management** in order to manage any current, ongoing or future risk.

Should an Extended Supervision Order (ESO) be considered an appropriate (sic), Mr Hickey will be provided with multiagency and multidisciplinary case management. This would include a referral to the Proactive Assessment and Intervention Service (PRAXIS) for ongoing assessment and interventions to address his CVE and non-CVE risks, needs and vulnerabilities. Please note that Mr Hickey would need to consent to this service.

In the event that Mr Hickey is subject to a Continuing Detention Order (CDO) he will be eligible for intervention from CSNSW Countering Five Extremism (CVE) Programs. Additionally, his activities and association should be closely monitored, particularly in regard to his potential to influence others.”

(Emphasis in original.)

137 I have already set out Ms Cruickshank’s comments about Mr Hickey’s background. She was of the view that he appeared to be engaging in some “positive impression management”. When she raised his negative views on females, he stated words to the effect of “present company excepted”. She was also concerned that he often engaged in normalising, minimising, and justifying his experiences and behaviours. She formed the view that his self-reported behaviours and extremist interests appear to be “sanitised and tempered in comparison to available collateral information”. He was also guarded when asked to provide information about the development of his belief systems.

138 Mr Hickey initially stated that he would participate in psychometric testing, but later declined to take part in that aspect of the assessment due to a concern about how the information would be used.

139 Ms Cruickshank stated the following in relation to Mr Hickey’s criminal history and ideological beliefs:

“70. During interview, Mr Hickey maintained the belief that he had been subject to ‘a campaign of harassment against me by authority’ due to his decision to express his opinions online. He reported insight that some of his online posts demonstrated increasing levels of anger, but also explained that writing had been an outlet for his feelings. He reported his intentions regarding his perceived treatment by the judiciary and authorities was to publicise ‘corruption’ and hoped to prevent its future occurrence. He reported consideration to stop his online activities in order to prevent future attention from authorities

71. Overall, Mr Hickey’s pathways to radicalisation is not well understood due to the paucity of information he provided. His views appear to be entrenched and held to some extent since at least his late teenage years.”

- 140 Ms Cruickshank asked Mr Hickey about his involvement with Stormfront. He dismissed people in the online environment as being “armchair warriors” rather than engaging in constructive action.
- 141 Mr Hickey told Ms Cruickshank that being the subject of an ESO would be “morally wrong”. He considered that being “trapped” in NSW would be “insane” and would hinder his access to family contacts for work and accommodation. He stated that he would be non-compliant with the order, but then explained that “his resistance would be passive, such as going on ‘the dole’ rather than seeking employment opportunities”. He said that he “didn’t know what he would do if kept away from his family”.

### *Risk assessment*

- 142 The purpose of the RAR is to assist the court in applying the “unacceptable risk” test. Ms Cruickshank quite properly commenced this aspect of her report by noting that it is not scientifically possible to accurately predict whether or not an individual offender will, or will not, reoffend. She stated:

“The best that can be offered is an estimate that is anchored to empirical literature specifying features associated with risk, and sound clinical analysis and formulation of how those present features might operate in the individual subject to the assessment.

The risk assessment process is necessarily multifaceted, combining the use of actuarial approaches and an assessment of dynamic (changeable) risk factors that contributed to a pattern of violent behaviour. The identification of dynamic risk factors assist in treatment planning and the development of risk management strategies.”

- 143 Ms Cruickshank also stated that “the process of risk assessment of violent or politically motivated violence is comparatively new, when compared to the risk assessment for general, violent and sexual offending behaviours” and that the sample size of terrorist offenders is relatively small. Both of these factors limit the efficacy of actuarial analysis and mean that it “cannot be anchored in statistical probabilities and subsequently a numerical score cannot be provided. Rather, the overall risk judgement is based on the clinician’s assessment of the available information at the time of the assessment”.
- 144 Ms Cruickshank used two statistical tools to assess Mr Hickey: the Violent Extremism Risk Assessment – Version 2 Revised (“VERA-2R”) and the Terrorist Radicalisation Assessment Protocol (“TRAP-18”).

- 145 The VERA-2R assesses risk by reference to multiple domains: “Beliefs, Attitudes & Ideology; Social Context & Intention; History; Action & Capacity; and Commitment & Motivation”. It forms part of a broader “multi-modal” assessment of the subject which accounts for intelligence/policing information, behavioural observation (in custody and in the community), the risk of ordinary criminal offending and psychological/psychosocial functioning. The VERA-2R was initially designed for offenders with a past or current charge or conviction of violent extremism but can also be used for persons of “possible concern”. There are 28 risk indicators, 6 protective factors and 11 supplementary indicators which lead to an estimate across three risk levels (low, medium, high).
- 146 Under “risk promoting factors”, Ms Cruickshank stated that Mr Hickey appeared to hold a “strong and entrenched commitment to white supremacist ideology” and that his self-report during the interview was “unconvincing”. She stated that his personal and ideological grievances have become intertwined. Despite the strong and threatening language he employs, Ms Cruickshank acknowledged that there is no history of Mr Hickey acting on these threats to cause physical harm. His “out-group” is extensive, and his vision of “Australia” is disconnected from reality. Ms Cruickshank referred to Mr Hickey’s engagement with, and publication of, violent extremist materials since at least 2009. Also of concern were that Mr Hickey has personal associations which encourage his views (including his brother and wife), that he has knowledge on weapons use and manufacture, strong organisational skills and some financial means. It was unclear how Mr Hickey came to form his beliefs.
- 147 Under “risk describing factors”, Ms Cruickshank noted that Mr Hickey appeared to be motivated by the perceived moral imperative of his beliefs as well as his perceived personal struggles and desire for notoriety.
- 148 Under “risk mitigating factors”, Ms Cruickshank said that Mr Hickey “appears to have high intervention needs due to the lack of protective factors” and generally could not find much in the way of mitigation. However, Mr Hickey expressed “some rejection of actual violence” and that ideological language is



not meant literally. Mr Hickey had no motivation to change his beliefs or rehabilitate nor had he engaged in “post-release planning”.

149 The TRAP-18 is a template to structure professional judgment of persons considered to be at risk of “lone actor” terrorism or extremist violence. The TRAP-18 uses two sets of variables: eight warning behaviours known as “proximal risks” for intended or targeted violence; and 10 “distal characteristics”. The TRAP-18 is not an actuarial measure of violence risk, but it does provide guidance on monitoring and management of persons considered at risk.

150 Ms Cruickshank stated that Mr Hickey presented with several distal characteristics and at least two proximal warning behaviours (with three other areas uncertain) and, consequently, “his case warrants ongoing monitoring and case management”.

151 In respect of Mr Hickey’s “proximal warning behaviours”, Ms Cruickshank noted that he has developed a “pathological preoccupation” in that his world ideology has become intertwined with personal grievances with members of government, the police and the judiciary. This preoccupation has led to the breakdown of his business and personal relationships, and to his incarceration. Mr Hickey also has a “warrior mentality”, with an interest in weapons, which he possessed and manufactured in the past (guns, explosives). Mr Cruickshank also mentioned his praise for Brenton Tarrant. She acknowledged that the information she received was imperfect, and concluded:

“While there is limited available evidence to suggest that Mr Hickey is currently on a pathway towards targeted violence, there is clear evidence of prior research and capacity, suggesting that should he choose to act, his behaviours could quickly escalate. *There is no information available to suggest Mr Hickey has recently tested his capacity to use violence.*”

(Emphasis added.)

152 Mr Hickey’s “distal characteristics” may be summarised as follows: personal grievances toward authorities and externalisation of responsibility; the affirmation of his beliefs through online behaviour; his capability of running a relatively successful business (noting that “lone actor” terrorists typically have no experience of occupational success) which has since broken down; an increasing level of anger and sentiments of violence toward “out-groups”

online; a lack of a healthy lasting intimate partnership (although Mr Hickey's previous wife is again atypical of lone actors, who often have no experience of intimacy); rigid personality traits; and an ability for creative and tactical thinking, including in the design of weapons (eg HikDeploy). It was noted that it could not be said that Mr Hickey has a history of group membership or affiliation.

### *Risk scenarios*

153 Ms Cruickshank has noted in her report that it is important to identify potential risk scenarios to assist staff in identifying high risk situations and develop appropriate monitoring, intervention and risk mitigating strategies. That is to be accepted but it is also important to the question of assessing the "unacceptable risk" test. It seems to me that the unacceptable risk could not be established to a high degree of probability, even at a preliminary hearing, if the court was not satisfied that a suggested risk scenario was a viable one. To put this another way, it is one thing to say that a person holds extremist views that promote violence expressed through the privacy of their online musings; but it is quite another matter to identify the pathway to a terrorist act or violent extremism from that position. As Ms Single quite properly accepted, the unacceptable risk contemplated is not simply condoning such behaviour; it is of committing a "serious terrorism offence" as defined in the THRO Act. In that regard, I have considered the risk scenarios advanced by Ms Cruickshank carefully. She has advanced three possible risk scenarios.

154 The first risk scenario identified in the RAR is that Mr Hickey may "inadvertently or intentionally" influence, encourage or incite vulnerable others to engage in ideologically motivated violence via his expressed attitudes and shared materials. In support of that risk scenario reliance is placed on the fact that Mr Hickey has, in the past, expressed the desire to spread his ideology to others; an ideology which has included praise and support for violent extremist acts perpetrated by others.

155 In the context of identifying this risk scenario, Ms Cruickshank has noted that sanctions and monitoring have had limited deterrent effect on his behaviours, Mr Hickey has not demonstrated any change in his beliefs, and he continues to downplay the content of material he has previously shared.

- 156 Ms Cruickshank opines that material that may potentially incite others to commit a serious terrorist attack would fall into one of two categories:
- (1) His anti-government statements that either implicitly or explicitly incite others to violent actions against government bodies or employees, with the intent to influence the administration or policies of these agencies; or
  - (2) His statements may incite others to take action against non-Caucasian and/or non - Christian outgroups.
- 157 The second possible risk scenario is that Mr Hickey may provide support for others to plan, prepare or engage in activities through consultation and advice, and utilising his practical skills, knowledge, and innovations.
- 158 In support of this risk scenario, Ms Cruickshank relies upon Mr Hickey's demonstrated willingness and capacity to share ideas with others and his capacity for innovation and creativity in relation to the HikDeploy design. It is opined that he *may* receive positive reinforcement via increased sense of status and recognition from these activities and *may* potentially meet others in person or online. Again, it is suggested that the targets of such a "serious terrorism offence" may relate either antigovernment or "racist" agendas.
- 159 The third possible risk scenario advanced by Ms Cruickshank is that Mr Hickey may be triggered by an event related to a personal grievance relating to having his occupational and or relationship goals thwarted. In this third risk scenario, the likely targets may be specific government employees, or members of organisations such as police and the judiciary. Mr Hickey believes that his current situation (loss of business, family, incarceration) has been caused by the public expression of his political views. In that respect, his motivation for such an attack would be both personal and ideological. Reliance is placed upon the fact that Mr Hickey appears to have the knowledge and capability to use weapons to cause harm to those he perceives as, either individually or collectively, thwarting his personal occupation or social goals.

*Other matters noted Ms Cruickshank*

- 160 Ms Cruickshank observed that Mr Hickey presents as having a strong work ethic. He completed his trade qualification as an electrician. He is also reported completing the Tertiary Preparation Program through the University of

Southern Queensland whilst he has been in custody. He expressed regrets to Ms Cruickshank regarding prior educational failures and stated an interest in attending university to study “block chain” or literature/writing.

161 He commenced his own business Smerff Electrical shortly after gaining his trade qualifications. He blames the ultimate failure of this business on the authorities because his IT equipment and important business records were seized during searches.

162 Finally, although Mr Hickey has been found with small amounts of drugs and/or drug paraphernalia on at least seven occasions between September 2010 and August 2019, it is not suggested that his drug use is a risk factor. The drugs he has been found with include MDMA, amphetamines, cannabis and steroids.

**Beliefs or commitments supporting engaging in terrorist act: s 39(3)(l)**

163 I have already described in general terms the development of Mr Hickey’s beliefs of the year (see above at [114 [Ref118458444](#)]ff).

164 Dr Julian Droogan prepared an expert report in June 2022 outlining both the nature of the extremist views held by Mr Hickey as well as providing comment on specific material that was provided to him.

165 Dr Droogan has a BA (Hons) from the University of Sydney 2001; a Doctor of Philosophy, studies in religions, University of Sydney 2008 and Graduate Certificate in Higher Education from Macquarie University in 2011. He has held various academic positions at Macquarie University in the Department of security studies in criminology (formerly known as the Centre for Policing, Intelligence and Counterterrorism). He currently serves as Director of Research for the Department, as well as Editor-in-chief of the peer reviewed academic journal “The Journal of Policing, Intelligence, and Counter Terrorism”. He also served on the New South Wales Premier’s Countering Violent Extremism advisory board up until its dissolution. His academic work has resulted in him spending significant amounts of extended time in The Netherlands, USA, Pakistan, Uzbekistan, Iran, Saudi Arabia, The Gulf States, Oman, Jordan, Lebanon, Palestine, Israel, Papua New Guinea and Algeria.

166 Dr Doogan's report takes the form of responding to specific questions asked of him. He was first asked to briefly explain the concept of and key ideological positions of the "far right" and where it sits on a spectrum of political ideology. He acknowledged that the term "far right" is often used interchangeably with "right wing extremism". Although no universally accepted definition exists he noted that the Centre the Analysis of the Radical Right, which is an influential scholarly NGO in the UK defines the far right as:

"A form of political extremism that describes a cluster of ideological features: extreme or ultra-nationalism; racism; xenophobia is; ethnocentrism; anti-Semitism; anti-communism; demand for strong law and order/strong state; opposition to the principles of human equality; anti-democracy/anti-liberalism."

167 He notes a 2020 United Nations report which accepts that it is not a coherent or easily defined movement but rather a "shifting, complex and overlapping milieu of individuals, groups and movements (online and off-line) expressing different but related ideologies". As for the Australian far right milieu, Dr Droogan opines that such followers are:

"...communities and individuals committed to an extreme social, political, or ideological position that is pro-white identity (the in-group), and actively suspicious of non-white others (the out- group - i.e., Muslims, Jews, elites). It incorporates a victim mentality and perception that the in-group is under existential threat by the out-group and hence a need exists to push back violently. It considers hostile action against out-groups as necessary for the survival of the in-group".

168 Dr Droogan noted that other ideological positions common to the far-right include: a nostalgia for an idealised and glorified past; the denigration of women as subservient to men; conviction that anti-white conspiracies are being promulgated by elites; the need for a strong authoritarian figure to return to a pro-white status quo; a need for the in-group to undermine the liberal political status quo through either legal or illegal means, and, commonly, a commitment to white supremacy or the view that white people are genetically and culturally superior to non-whites and that the citizenship of non-white peoples should be restricted/eliminated in "white" nations.

169 Dr Droogan opined that at their most extreme, far right ideologies take forms that are supportive of outright fascism/neo-Nazism. As for the relationship between the "far right" and the "extreme right" he observed the following:

“The relation between the far-right and violence is nuanced, with not all individuals aligned with far-right movements engaged in or supporting explicit anti-state violence. This can be confusing, as the terms ‘far-right’ and ‘right wing extremism’ are commonly used to describe extreme political ideologies, some fringe political parties, social movements, and violent anti-state groups, rhetoric, and actions.”

170 In his report, Dr Droogan noted that scholars treat the “far right” as spanning the “radical right” and the “extreme right”, with the latter being the group that “engages in overt strategic violence and terrorism acts in order to incite social and political revolution, with an aim of replacing the current political order with one based on white supremacist ideals”. Dr Droogan also identifies the far-right as “highly opportunistic”. He observed that it is common for individuals or groups to move across this fluid spectrum between the “radical right” and “extreme right” as opportunity dictates.

171 As stated above, Dr Droogan was provided with material produced by Mr Hickey. His expert opinion was that:

“The material in this brief is consistent with someone best described as sitting on the ‘extreme’ far-right. This is because of the explicitly violent nature of much of the propaganda, the repeated explicit references to race war, day of the rope, Earl Turner and other classic ‘accelerationist’ themes, and the presence of a doctored video of the Christchurch terrorist attack that has been manipulated to glorify and celebrate this act and is, in my opinion, an example of manufactured terrorist propaganda.”

172 Dr Droogan explains that references to “Day of the Rope” come from the 1978 fictional book “The Turner Diaries” by a neo-Nazi figure William Pearce (which was a pseudonym). The book presents a fictional account of a blueprint for a white supremacist “accelerationist” revolution in the USA. The Anti Defamation League describes the book as follows:

“In the novel, white supremacist rebels, having taken control of California, engage in mass lynchings of purported “race traitors” such as journalists, politicians and women in relationships with non-white men. These murders, which take place on the same day are referred to in the novel as the “Day of the Rope.”

173 Dr Droogan opines that the material in the brief is “consistent with a set of themes and ideologies common to far-right extremist movements and with violent extremism”. In particular, Dr Droogan identifies the following themes (and gives a list of examples from Mr Hickey’s online statements in relation to each theme):

- (1) Anti-Semitic conspiracy theories, which have been linked with far right extremism and terrorism on many occasions, including in the context of recent terrorist attacks in New Zealand, the USA and Germany. There are constant references to the Judenpresse (the Jewish press) and Judenbanks (the Jewish banks) which are terms that have been used since the early 20th century by anti-Semites, fascists, Nazis and neo-Nazis as a way of condemning liberal newspapers and the international banking system as tools of the secret international Jewish cabals bent on influencing and undermining European and Western society.
  - (2) The “Great Replacement” conspiracy theory, which has been connected to a series of recent far-right attacks. This theory claims that white people are being purposefully replaced by non-whites through “suicidal” multicultural and immigration practices, resulting in an eventual white genocide.
  - (3) “Accelerationism”, which is an ideology adopted by far-right groups linked to violence and was clearly indicated in Brenton Tarrant’s manifesto. It is a strategy of political violence that predates its adoption by far right extremists. Since the 1970s it has become increasingly important part of the self-consciousness of violent far right movements groups and lone violent actors. It advocates for the inciting and promoting of societal fracturing and collapse through the actions of small cells and lone individuals.
  - (4) Norse/Viking imagery, which has been utilised by some far-right groups, including the US based National Socialist Movement, and which is associated with the orchestration of the 2011 terrorist attack in Norway perpetrated by Anders Breivik. It is sometimes referred to Odinism whereby it becomes quasi-religious movement. It has been connected with a series of violent extremists and terrorist attacks including Anders Breivik. Mr Tarrant also alluded to Odinism.
  - (5) Extreme misogyny, which while “rarely explicitly stated by violent actors as being their motivating grievance has been argued by scholars of far-right terrorism to be a pervasive ‘underpinning element’ of far-right violence.”
- 174 An example of the misogynistic material that Mr Hickey has posted on his work website, “Smerff electrical”, is the material headed “Force wealth transfer”. In it, Mr Hickey advances a new social resources allocation system where women who wish to make their lives easier using men’s services or creations have to contribute something in return. Mr Hickey proposed that a debit card should be issued which entitles a woman to conduct transactions at all businesses but if she falls into arrears, it can be stopped. Without such a card she cannot conduct any transactions at all. In order to obtain such a card, a number of requirements are advanced by Mr Hickey which include the following:

“women must submit their weekly form every Monday to the Minister via Smart phone app;

the forms shall contain no less than two verifiable signatures from men not related to the woman in any way;

women who are married may submit their husband’s signatures which shall be accepted as fact;

a man signing the electronic form does so only after receiving sex of the duration and quality he deemed satisfactory;

men signing forms without receiving the sex as per new legislation risk fines of increasing severity;

women or men caught cheating the system in any way are subject to prosecution, fines and/or imprisonment;

women’s sex records are checked around twice yearly for compliance;

all women are required to produce a credit card to be scanned at all payment terminals for goods and services;

women who have incomplete sexual signatures in any week should be denied payment authorisation at all terminals.”

175 The same post also includes the following comment:

“The enormous beasts we see around school staff rooms and public service jobs would be forced to exercise and start getting in shape. The only way to get her hands on those juicy flame grill burgers and super-size junkfood delights was to get someone to f\*\*k her twice every week. Plastic shaped like a penis won’t count. The only way to get a living breathing guy to f\*\*k her is to look good and be friendly. Two things she had never cared about prior to January 1 of 2018. Things she never thought she’d have to care about. Why?”

176 I pause to note that having read Mr Hickey’s manifesto including the requirement that women must partake in a particular amount of (heterosexual) sexual intercourse each week, I briefly considered whether Mr Hickey was also an “Incel” (involuntary celibate). Such ideology is commonly associated with the far right: see *State of New South Wales v Holt* [2021] NSWSC 1076 at [122] and *The State of New South Wales v Reginald Collingwood* (a pseudonym) [2021] NSWSC 1365). Having considered the supporting documentation, I am satisfied that that is not the case.

177 Dr Droogan was asked to comment specifically on the images and symbols with which he was briefed. Dr Droogan explains the connection between a number of those images and violent extremism. His analysis was extensive but some of the following matters are of significance:

- (1) Dr Droogan identifies, in relation to the image depicting an eagle, automatic weapon and Nazi swastika with the caption “stop the



invasion, defend Europe”, that “The addition of the automatic weapon and Nazi swastika and eagle to this image suggest that the solution to the great replacement problem is direct violence and the adoption of national socialism (Nazi fascism)”, and notes that the great replacement theory was a central motivation for the Christchurch terror attack.

- (2) In relation to a meme depicting Brenton Tarrant as a “high elf of Valinor”, Dr Droogan says that “The use of medieval and fantasy themes and images present a white European-like fantasy world that is beset by evil forces that must be defeated through a masculine warrior ethos. This narrative is appealing to far right actors, who are able to portray their racism and violence against the out-group as a noble and heroic action “defending the West” in the face of an evil invasion by non-white populations. This is how Tarrant presented his terrorist attack in his manifesto.”
- (3) In relation to an image of a boardroom with many depictions of the “Happy Merchant”, Dr Droogan identifies that “This conspiracy theory and caricature of the ‘Happy Merchant’ is commonly used with the far-right across the spectrum from radical to extreme. It has been used to justify violence against Jews within the violent extreme far-right, for example in the manifesto produced by the alleged perpetrator of the 2022 Buffalo shooting.”
- (4) The advertisement for Mr Hickey’s electrical company uses the character Pepe the Frog dressed as a Nazi SS soldier.

178 In relation to Mr Hickey’s tattoos, Dr Droogan identified that his chest tattoo depicts the “SS lightning bolts” symbol. He explains that:

“The SS lightning bolts are a common far-right symbol derived from the Schutzstaffel (SS) paramilitary organisation in operation during Nazi Germany. Since the Second World War the SS lightning bolts image has been adopted by white supremacists and neo-Nazis individuals and groups globally. When the symbol has pointed ends on each of the ‘S’ (as this one does), this is often associated with prison tattoos. As a symbol of the SS, the ‘lightning bolts’ are particularly anti-Semitic. The SS operated as a ‘state within a state’ in Nazi Germany, by men who considered themselves to be a ‘pure’ racial elite. The SS were tasked to lead the implementation of the ‘final solution’, or attempt to murder all European Jews.”

179 Dr Droogan also explains that the website 4Chan-org is an alternative message board social media platform established in 2003 that has made it attractive to the hosting of extreme and subversive subcultures. Dr Droogan is of the view that it has played a significant role in incubating far right extremist communities and in pushing users to even more extreme parts of the Internet.

*Dr Droogan's expert opinions regarding the two videos*

**Ebba's Revenge**

180 Dr Droogan stated that in his research he had interviewed young Australians about their experiences accessing videos of the Christchurch live stream online. It was common for young Australians to have come across this material online. But Dr Droogan notes that Mr Hickey has deliberately edited portions of that footage and repackaged it. Supporters of the violent far right do so to evade and swamp automatic social media platform moderation software and allow propaganda to spread widely to online audiences. This was a strategy originally used by Islamic State.

181 Dr Droogan engages in a detailed analysis of the "Ebba's Revenge" video in his report. That recording formed the basis of the 2019 charges for use carriage service to menace/harass/offend. Dr Droogan describes the video in this way:

"This video shows portions of the live-stream of the Christchurch terrorist attack carried out and filmed by Brenton Tarrant in 2019. The video is highly graphic and violent, depicting the shooting and killing of many Islamic worshippers, including men, women, and children, some at point blank range. The video has been edited to include commentary at the beginning and end, overlaid captions at various points, gamification scores depicting the 'points gained' by the shooter as he kills individuals, and a voiceover.

These additions construct a narrative that Tarrant's attack was carried out as justified retaliation against Islamic terrorism and Islamic violence carried out against white female children. Themes related to the supposed replacement of Europeans by Muslim populations are coupled with a violent call to arms to save Europe from this humiliation and 'white genocide'. Brenton Tarrant is portrayed as a warrior who was justified in his attack because it was retaliation against jihadist terrorism and demographic replacement.

This video and its editing clearly depicts, celebrates, and attempts to justify far-right terroristic violence against Muslims."

182 Dr Droogan considers that the "deliberate editing of portions of the Christchurch terrorist attack to celebrate and glorify it and its attacker is, to [his] mind, an example of the creation of terrorist propaganda with the aim to facilitate its spread online and radicalise others to violence." Dr Droogan goes on to describe the content of the video and identifies timestamps of significance. At the beginning of the video, Tarrant is described as "LOYAL AUSTRALIAN PATRIOT BRENTON TARRANT – Doing what needs to be done. Defender of Europe, Australia and New Zealand" and then as

“TARRANT: Remover of Kebab and defender of our race. Vengeance for Ebba and the thousands of European victims of Islamic terror. Your name shall live on soldier.”

183 Dr Droogan notes that Mr Hickey also put images of the attack on the Smerff Electrical website with the caption “Live or die, know I did it all for you; my friends, my family, my people, my culture, my RACE. Goodbye, god bless you all and I will see you in Valhalla. EUROPA RISES. God Bless you Brenton Tarrant you earned your place in Valhalla.” Dr Droogan observed that these images “Suggest support for [Tarrant’s] terrorist attack and a conviction that he will be rewarded with an afterlife in the mythological halls of Valhalla, the place where Vikings who died nobly in battle spend eternity in comfort, feasting, and celebration.”

184 I have already extracted what Mr Hickey said when he circulated the video above at [83 [Ref118459717](#)].

**“How the Left Destroyed Australia”**

185 Dr Droogan also comments in his report on the video “How the Left Destroyed Australia”, which was created by Mr Hickey and posted on the BitChute website on 14 May 2021. As stated above, I have watched this video in its entirety.

186 Dr Droogan draws attention to the following parts of the video:

- (1) A passage where the defendant narrates “Hickey has every right to be pissed. What should an honest man do when he is shat on from a great height by these bastards? A few ideas came to mind. I had to put killdozer out of my head and consider other options”.
- (2) A scene of random violence, explosions and mayhem accompanied by the narration “When will I hit my limit and lose it?”
- (3) An image of a heavy vehicle smashing through a building with an accompanying Nazi swastika and the caption “BREAKING NEWS: This Smerff was pushed too far.” The narration then identifies that several people would be “there in spirit”, including David Lane (a far-right violent extremist from the USA) and George Rockwell (considered to be the “father of American neo-Nazism”).
- (4) A statement that “This is what Australia’s come to. We will have to take our rights back eventually. Nothing like that is ever given away. We’ll do it the hard way if necessary. And those who took them from us will be dealt with appropriately. ... We’ll do it the hard way if necessary”, is

accompanied by images of soldiers with weapons and an image of Mr Hickey aiming a rifle.

- (5) A passage where Mr Hickey describes Queensland as having destroyed his livelihood and says, "I could destroy theirs in an hour". This is accompanied by an image of soldiers with gasmasks with the caption "HANS GET THE SHOVEL" and then an image of an hourglass and of Hitler and a Nazi standard pointing the way forward.
- (6) A passage where Mr Hickey says, "What I needed was a SKS (a semi-automatic rifle), a 7.62 (a type of cartridge used with rifles), and a small group of dedicated men." This is followed by an image of a man holding a rifle with the face of Pepe the Frog taken from the Smerff Electrical logo superimposed over his head. There is then an image of a Viking warrior with the question "WHAT WOULD YOUR ANCESTORS DO?" followed by an image of crusader warriors on the battlefield with the caption "De libero aut mors – deus vult" which translates as "freedom or death – God wills/decides".

187 I note that, as Ms Single quite properly conceded during oral submissions, on a number of occasions in this recording Mr Hickey raised the prospect that he had been driven so far by the legal system that the thought of doing acts of violence (such as using a killdozer) crossed his mind but he put them to one side in preference to non-violent means.

188 Dr Droogan's report runs to over 60 pages. I do not propose to summarise all of it. He identifies a range of statements made by Mr Hickey that support violent acts. It is of interest that one of the statements Dr Droogan relies upon is Mr Hickey's submission to the Inquiry into Extremist Movements and Radicalism in Australia (extracted above at [132 [Ref118459855](#)]), which is also relied upon by Mr Kerkysharian in support of Mr Hickey's case that his fundamental crusade is for freedom of speech.

189 Dr Droogan also identifies that the books and published materials located at Mr Hickey's home during one of the raids contain "almost all the key foundational texts associated with far-right extremism and 'accelerationism'." In addition, he identifies that Mr Hickey possessed a copy of The Anarchist Handbook, which he describes as "a series of books written to provide strategic or tactical instruction on how to make improvised homemade weapons".

### **Mental health**

190 Having read a considerable amount of Mr Hickey's musings, some of them would appear to suggest that he may have at the very least some form of

personality disorder. There is no expert evidence to suggest that that is the case.

191 Mr Hickey's only assessment by a psychologist or a psychiatrist is that conducted by Mr Albassit, a psychologist, who prepared a report for Mr Hickey's sentencing proceedings in Queensland. He diagnosed Mr Hickey with complex PTSD arising from his childhood. Mr Albassit concluded that Mr Hickey's offending behaviour was linked to this diagnosis.

192 Ms Cruickshank was not able to confirm that diagnosis because Mr Hickey refused to participate in psychometric testing. She did note that Mr Hickey has not received treatment for his PTSD. She also noted that Mr Hickey has consistently denied any mental health symptoms or concerns. She accepted that it was possible that he was experiencing symptoms but under-reporting them but could not make a finding in this regard. Ms Cruickshank did note that there have been no obvious outward signs of psychological distress during his period of custody. There is no suggestion of self-harm ideation behaviours.

193 Ms Cruickshank considered that Mr Hickey's mindset does suggest a general mistrust of others and a hypervigilant attitude, which appears to be a pervasive personality trait and that he demonstrates several traits consistent with narcissistic personality disorder. On both counts, she needed further information in order to assess whether he meets that diagnostic criteria.

**Any other information as to likelihood of committing serious terrorism offences 39(3)(m)**

194 There were some indicators in the material to suggest that Mr Hickey may have been physically or verbally aggressive towards two women with whom he has had sexual or romantic relationships.

195 On 11 October 2017, his wife Elena sent him a text message where she said "Why insult me, beat me? me in my life my mother did not hit, you hit me. after that you feel like a tough man?"

196 An iPhone audio recording from 26 August 2019 records Mr Hickey calling Elena a "cunt" and saying "[i]f you don't fucking listen to me, I'm going to throw you out, over the balcony, Leave me the fuck alone" and "[i]f you did this in any

other part of the world, your husband would kill you, you'd deserve it, you really would."

197 In addition, CCTV footage obtained from Mr Hickey's residence shows an altercation that occurred on 22 March 2019 between him and a woman who appears to have been a sex worker. Mr Hickey is apparently seen to drag the woman down a set of stairs and across the front yard of his house. He sent the CCTV footage to someone identified in his contacts as "Mad Matty" and said "[y]ou could have a morning like me. That crazy Jap Cunt wouldn't leave so I literally dragged her down the stairs and threw her out." He went on to say that "I swear these bitches need a good right cross sometimes" and refers to the woman as an "Untermench." (which means subhuman)

198 I note that Ms Cruickshank observed that Mr Hickey told her that engaging in extramarital affairs was normal male behaviour and that he was entitled to have sex with other women. He denied ever being violent towards women. He stated that his wife drinks and hits him when she is drunk. Mr Hickey apparently has a specific attraction to Asian women but appears to view those contacts with derision given his beliefs about ethnicity.

#### *Aggrieved litigant*

199 I have set out Mr Hickey's troubled legal history above. It is to be accepted that he uses Nazi and other extremist imagery in his video "How the Left destroyed Australia" but having watched it in its entirety the underlying theme has little to do with his white supremacist views per se. Rather, it expresses, albeit with the use of far right memes and imagery, the frustration of an aggrieved litigant who feels that the justice system has conspired against him. With the exception of the Ebba's Revenge video nearly all of his recent vitriol is aimed at those in authority in Queensland. The relevance of his far right ideology is simply that he believes he is being persecuted for having those beliefs

200 Similarly, on a website entitled "Beenleigh Magistrates Court" Mr Hickey posted material critical of the Queensland judiciary and setting out his perception that he had been unfairly targeted and treated by police and the judiciary, who he considers are acting on behalf of Jewish interests and/or women/feminists.

201 In addition, Mr Hickey's posts include a cartoon depicting a bomb entitled "whitey". Two caricatured Jewish figures are hitting the bomb, one of them saying "Are you sure it's safe to continue doing this?" and the other saying "Yes yes, this thing has been disarmed since 1945, keep pounding it."

202 On 20 August 2020, The XYZ website posted an article which extracted a letter sent to it by Mr Hickey. The letter sets out in detail Mr Hickey's opinion that he had been "targeted and harassed by the Queensland government, the culmination of which was my jail sentence imposed on September the 19th of 2019." Mr Hickey identifies in the letter that his home was raided by police in October 2017 and says "[d]uring that first raid the rabid left wing activists masquerading as government investigators stole everything in my office, contacted all of my regular customers and took the business website off line. The intention was to break the business, but they failed. We recovered quickly because our phone just kept ringing." He goes on to say:

"I have written to XYZ, Andrew Anglin and the Stormer, to draw attention to this insane series of events So that other white working men are aware of the tactics employed by Western governments to silence any opposition to their policies I thought I had nothing to fear from police and government because I wasn't a criminal. I had a twenty five year steady work history, a certificate showing no criminal convictions and a reputation for honesty. That all meant nothing when they decided to shut me up. I still ended up in jail because I sponsored the Stormer.

Do I regret my association with Anglin and the Stormer? Not at all. I regret the enormous loss and anxiety is has caused myself and my family, but none of that was my doing. We were minding our own business, doing electrical work and poking fun at the holocaust when these evil parasites forced their way into my home and personal life. Even after serious, repeated, unjustified provocations, I haven't taken any violent action in response. *I still believe that our final victory is inevitable, and we don't need to resort to those sorts of tactics We will be victorious without violence because of our integrity, our righteousness and our persistence.*

I would like to thank Andrew Anglin for publicising my plight, as well as all the people who sent me mail in prison. Their words of encouragement around Christmas 2019 really meant a lot. Amon Goth, Bill Nelson and Hermann Venus, a bloke from Ireland his name escapes me now. If there are others I missed then I apologise, the prison was stealing both incoming and outgoing mail there for a little bit."

(Emphasis added.)

**Risk management report – Corrective Services Reports as to management in the community: s 39(3)(d)**

- 203 A Risk Management Report (RMR) dated 22 August 2022 was prepared by Kimberley Rambaud, Enforcement Officer in the HRTOU, Community Corrections. Such a report is necessary to address what conditions would be appropriate should Mr Hickey be placed on an ESO
- 204 Ms Rambaud noted that Mr Hickey, who has a history of non-compliance with community supervision generally, including multiple breaches of bail conditions and restraining order conditions, in May 2021 forcibly removed his electronic monitoring equipment and absconded to Victoria while subject to the Supreme Court bail conditions in Queensland. She also noted that Mr Hickey has expressed his opposition to all potential conditions of an ESO indicating his intention to be non-compliant should it be imposed and suggesting that he would end up back in gaol if he was required to remain in NSW on such an order.
- 205 An ESO Management Report was also prepared by Detective Sergeant Marco Buttigieg in HRTOU on 12 September 2022. The report was prepared on the basis of information contained in the records held by NSW Police and the RAR prepared by Ms Cruickshank. Having referred to the risk factors as identified in the RAR, the report recommended 58 conditions to support the risk management plan deeming them necessary in order to prevent Mr Hickey from self-radicalising, reduce his risk of re-offending and to address the specific risk of the defendant desensitising himself to the acts of violence as a known strategy for persons planning an act of terrorism.
- 206 The 58 conditions proposed for an ISO for the defendant, pursuant to s 29(1A) of the THRO Act are set out in Schedule A. They aim to regulate Mr Hickey's supervision, movements and reporting; use of vehicles; financial oversight; electronic monitoring; accommodation; place and travel restrictions; search and seizure; drugs and alcohol use; weapons; psychological/psychiatric assessment, counselling and medical treatment; employment, volunteering and education; communication, internet use and electronic devices; associations with persons, groups and affiliates; identity and appearance; and engagement with extremist material.



**Likelihood and history of compliance with supervision: ss 39(3)(h)-(i)**

207 I have already set out his non-compliance history above in relation to his criminal history. Ms Cruickshank noted in the RAR that Mr Hickey has demonstrated significant instances of poor response to community supervision. This has included perseverating with posting material online against conditions of a restraining order, removing an electronic monitoring bracelet twice and absconding interstate whilst under supervision. Despite this, she noted that he has demonstrated an ability to comply with reporting obligations and cited the period from August 2020 to May 2020 where he complied with his bail conditions.

208 Despite his poor history of compliance, Mr Hickey does not have any charges of institutional misconduct.

**The State's submissions**

209 Ms Single submitted that the court would take the evidence in its totality and find that there is a clear risk of Mr Hickey's conduct intensifying to a point where he carries out an action or makes a threat with the intention required under s. 100.1 of the *Criminal Code*. She relied upon the three risk scenarios outlined in the RAR that I have summarised above. She also relied upon the actuarial tools of assessment.

210 It was submitted that Mr Hickey has "advocated" support for engaging in terrorist acts or violent extremism, which by definition means to "plead in favour of; support or urge by argument, recommend publicly". It was submitted that the broad definition in s 10(1A)(a) makes it clear that the concept of advocating support for a terrorist act or violent extremism is intended to capture a broad range of conduct. Reliance was placed on the numerous examples of Mr Hickey advocating support for engaging in terrorist acts or violent extremism within the material I have already referred to as well as in Dr Droogan's report. Particular reliance was placed on the following material.

211 First, it was submitted that the "Ebba's Revenge" video advocates support for Brenton Tarrant's Christchurch terrorist attack. It was noted that during the interview with Ms Cruickshank Mr Hickey denied having produced the video in contrast to the text message to his wife stating, "I produced funny video game

version with music and scoring points". He also told Ms Cruickshank that he did not share the video, but shared 'the link' to the video". It was submitted that this is an attempt to minimise his conduct.

212 As for the motivation for sharing the link, Mr Hickey told Ms Cruickshank that it was because it was simply an "interesting current event". He emphasised to Ms Cruickshank that he never advocated Brenton Tarrant's actions. But it was submitted that such an explanation is inconsistent with both the content of the video and the statements made on the Smerff Electrical website supportive of Mr Tarrant such as "god Bless you Brenton Tarrant you earned your place in Valhalla".

213 It was further submitted that Mr Hickey's comment, to his wife when he sent her the video that, "everyone can sing along as he wastes kebabs...fun for all the family" is a statement supporting and glorifying Mr Tarrant's act of terrorism/violent extremism.

214 Secondly, it was submitted that the use of the meme depicting Mr Tarrant as a "high elf of Valinor" advocates support for violent extremism, as does the "[j]ust do it" image of Tarrant in some of the material. It was submitted that these images and memes convey the message that Tarrant was acting heroically and doing what was necessary in carrying out the Christchurch terrorism attack.

215 Thirdly, reliance was placed on the identification by Dr Droogan of a range of statements in the supporting documentation which, in his expert opinion, advocate support for terrorist acts and violent extremism. In particular, Dr Droogan refers to a post commencing "[t]here will come a day soon..." and states that this is:

"a reference to an 'accelerationist' fantasy whereby society undergoes some sort of violent upheaval due to increased immigration and racial tensions, leading to the violent downfall of the established order and its replacement by a of white nationalist ethno-state. The reference to the 'day of the rope' lynching and image of the hangman's noose are direct references to The Turner Diaries, the novel that provides a fictional blueprint and inspiration for such a civil war and eventual defeat and extermination of non-white populations."

- 216 Dr Droogan refers to other statements (one in which he refers to ordinary Australians) and opines that it contains “a clear threat about the supposedly coming race-war and genocide against non-whites”.
- 217 Fourthly, reliance was placed on the posts on Stormfront (between 2013 and 2015) which contain a number of statements said to advocate support for terrorism or violent extremism. It was submitted that the sheer number of statements made by Mr Hickey show that his comments about violence are not isolated incidences. On the contrary, it was noted that Mr Hickey has a long history of making statements supporting extremist violence, for example, condoning or supporting the murder of non-white people.
- 218 Fifthly, it was noted that Mr Hickey uses a wide range of Nazi iconography in the online material which he has produced and reposted (in addition to printing swastikas onto the HikDeploy boxes). These include the Pepe the Frog logo on the Smerff Electrical website (which was present on each page of the website) which incorporates an SS uniform and an image of a concentration camp. Dr Droogan identifies that Mr Hickey’s lightning bolt tattoo depicts the “SS lightning bolts” symbol. It was submitted that the use of Nazi iconography, and particularly the use of SS iconography, advocate support for violent extremism.
- 219 Sixthly, it was submitted that Mr Hickey posted on Facebook a number of statements which advocate support for terrorist acts or violent extremism. Seventhly, it was submitted that Mr Hickey included on his website a number of statements which, it was submitted, advocate support for terrorist acts or violent extremism. Finally, it was submitted that some of Mr Hickey’s statements concerning the HikDeploy advocate support for terrorist acts or violent extremism, in that they advocate the use of the HikDeploy to intimidate the Queensland police force. Mr Hickey told Ms Cruickshank he was motivated by “revenge” to develop the HikDeploy. In one of the promotional videos he stated: “Target must be a government vehicle in real pursuit ... We aren’t in this for the money ... Vengeance is a strong motivation. A righteous man can only be pushed so far.”

220 It was submitted that when all of the statements made by Mr Hickey are analysed it is clear that he advocates for (in that he supports and publicly recommends) engaging in terrorist acts and violent extremism.

### **Mr Kerkyasharian's submissions**

221 Mr Hickey's counsel submitted that Mr Hickey's views provided no basis to conclude that, at the date of hearing, he was at risk of committing a serious terrorism offence. Rather, Mr Kerkyasharian submitted that Mr Hickey's lack of criminal record and risk of violence countered any suggestion there was an unacceptable risk that he may engage in such offending.

222 It was submitted that there was no evidence to support the assertion that Mr Hickey had ever performed an act meeting the definition of a "terrorist act" as set out section 100.1 of the *Criminal Code*. Mr Kerkyasharian submitted that whilst there was evidence that Mr Hickey had expressed non-mainstream and repugnant views that were considered offensive by society, these were not accompanied by any act that met the definition of "terrorist act". Mr Kerkyasharian submitted that Mr Hickey's lack of criminal record weighed against the suggestion that there was an unacceptable risk that he would engage in a "serious terrorist act".

223 Mr Kerkyasharian submitted that Mr Hickey's accounts, in addition to external and objective evidence, supports the suggestion there is no risk of Mr Hickey acting on his political viewpoints. Mr Kerkyasharian relied on material produced by Mr Hickey referencing "victory without violence" and comments from a prison psychologist of 7 March 2022 stating he "appeared sincere when he denied harbouring any thoughts, plans or intention to harm himself or others...". It was submitted that, in Mr Hickey's case, there is a distinction between the views he holds and the likelihood he will act on them.

224 Mr Kerkyasharian submitted that material to which the State points to as being indicative of Mr Hickey being prepared to take action in support of his ideological causes, is in fact indicative of the opposite.

225 It was submitted that a number of old statements made by Mr Hickey, which although distasteful, cannot be taken to be evidence of an intention to act on them. Two examples were relied on:

- (1) Mr Hickey is said to have written in October 2011 that he was 'growing disillusioned with the movement. Nobody will get off their ass and do anything.' It was submitted that in the following eleven years, Mr Hickey has not committed a terrorist act.
- (2) Mr Hickey is said to have written on 30 December 2014 that police officers in England were soon to be hanged. It was submitted that in the following eight years, Mr Hickey did not hang them nor was there any evidence to suggest he took steps to make this happen.

226 Mr Kerkysharian made further submissions regarding a submission drafted by Mr Hickey for the Parliamentary Joint Committee on Intelligence and Security Inquiry into Extremist Movements and Radicalism in Australia. It was submitted that Mr Hickey's submission was ultimately consistent with someone prepared to participate in political processes in a non-violent manner. Mr Hickey submitted to that inquiry:

"Our people's goals do not include the harm or detriment of other people. It is possible and desirable to work towards your own interests without oppressing others."

- 227 It was submitted that historical repugnant comments made by Mr Hickey considered together as part of a "circumstantial mosaic" leaves open the possibility they have been made in poor taste, indicative only of Mr Hickey's abhorrent beliefs but they do not in any way evince an intention to act. Mr Kerkysharian submitted the court could not be satisfied to a high degree of probability otherwise.
- 228 It was accepted that evidence before the court satisfies the requirement that Mr Hickey is a "convicted NSW terrorism activity offender" pursuant to s.10(1)(c)(iii) of the THRO Ac, but beyond that the material does nothing more than indicate Mr Hickey has repugnant views. Mr Kerkysharian submitted that insofar as this goes to the question of risk, it shows that despite holding those views, Mr Hickey has not committed a relevant offence.
- 229 It was submitted that the court cannot be satisfied that there is an unacceptable risk of Mr Hickey committing a relevant offence. It was submitted that this is because the State did not provide any particularisation of which serious terrorism offence it was alleged Mr Hickey poses a risk of committing. Mr Kerkysharian acknowledged that any prospective assessment of risk cannot precisely identify the offence that will be committed. Nonetheless, it was

submitted that, at a minimum, the court must be satisfied of something more than there being a risk Mr Hickey will commit a violent act or terrorist act, rather, it must be satisfied there is an unacceptable risk of him committing a *serious terrorism offence*.

230 It was submitted that the three “risk scenarios” Mr Hickey may engage in, as identified in the RAR do not rise to the level required of any relevant offending.

- (1) The first risk scenario identified is that Mr Hickey “may inadvertently or intentionally influence encourage or incite vulnerable others to engage in ideological violence.” Mr Kerkyasharian submitted that at its highest, this description may make out an offence of advocating terrorism contrary to s 80.2.C of the *Criminal Code*, but this is not classified as a “serious terrorism offence”.
- (2) The second risk scenario identified is that Mr Hickey may “[do] acts in preparation for, or planning, a terrorist attack”. It is submitted that the highest level the RAR rises to is to the proposition that Mr Hickey “may” provide support for a terrorist act. It was submitted that for this to occur, there must be a change in Mr Hickey’s behaviour that he has been engaging in for past decades. Mr Kerkyasharian submitted there is no evidence before the court that would allow it to conclude to a high degree of probability that this change will occur.
- (3) The third risk scenario identified is that Mr Hickey “engage in a terrorist act”. It was submitted that this scenario posits little more than the *possibility* Mr Hickey will engage in violence and justify it with recourse to his ideological attitude. Mr Kerkyasharian submitted that this alone is not a terrorism offence.

231 As for the actuarial tools, it was submitted that the VERA-2R and TRAP-18 cannot justify a finding that Mr Hickey poses a risk of committing a relevant offence, and certainly not to the high level of satisfaction required by the THRO Act for the following reasons:

- (1) That VERA-2R tool is not applicable to Mr Hickey as he has not had a past or current charge or conviction of violent extremism, politically motivated violence or terrorism offences. It was submitted that as VERA-2R was designed for offenders of that kind and given Mr Hickey’s lack of similar offending, the court cannot be satisfied the tool is applicable. It was submitted therefore, that the court cannot come to the view that conclusions based on it are relevant to Mr Hickey or hold significant probative value.
- (2) That the conclusion reached relating to TRAP-18, cannot assist the court as Mr Hickey engaged poorly in interviewing processes required as part of the TRAP-18. The TRAP-18 tool examines whether an individual carries any of the “eight warning behaviours” of lone actor

terrorist attacks. It was found that Mr Hickey partially meets two criteria, those being “fixation” and “warrior mentality”. It was further submitted however, that Mr Hickey’s lack of engagement in interviewing meant that even at its highest, evidence of the TRAP-18 results do not indicate that Mr Hickey has fixations and preoccupations but rather that the court cannot come to a conclusion about that issue.

(3) Mr Kerkyasharian further submitted that what both tools address differs from the statutory test for establishing whether the defendant poses an unacceptable risk. He submitted that in the absence of evidence as to how the tests relate directly to the risk of committing a serious terrorism offence, the discussion of specific factors identified in each test is tangentially relevant at best.

232 It was submitted that in the absence of being satisfied the tools used in the RAR are applicable, the court could not come to the view the conclusions based on it are relevant, or, in the alternative, of any significant probative value.

233 It was submitted that the conclusion drawn in the RAR that Mr Hickey has a “Low-Medium risk” of committing of an offence of a kind he has committed in the past does not give rise to a risk of the kind of offending contemplated by the THRO Act. It was further submitted that there was no basis for the court to find that Mr Hickey is at risk of committing a violent offence. It was submitted that this is because Ms Cruickshank declined to conduct an assessment regarding violent offending due to his “lack of historical or current instances of violent behaviour”.

234 Mr Kerkyasharian submitted that Ms Cruickshank failed to specifically address the risk of Mr Hickey committing a “serious terrorism offence” despite being asked to. It was submitted that Ms Cruickshank conflated the risk of committing a serious terrorism offence with consideration of Mr Hickey committing “violent extremist offending” and that “violent extremist offending” cannot equate to the risk of committing a “serious terrorism offence”.

235 It was ultimately submitted that the court could not be satisfied Mr Hickey poses a risk of committing a serious terrorist offence at all, and certainly not to the high standard contemplated by the THRO Act.

236 Submissions were also made as to the applicability of an ESO rather than a CDO should the court otherwise find that the test is been satisfied. For reasons

that will become evident below it is not necessary for me to consider those submissions.

237 Mr Kerkyasharian ultimately submitted that merely holding views repugnant to mainstream society and committing minor crimes in the past, does not amount to a terrorist offence. It was submitted that to make a finding to the contrary would not be in accordance with the purposes of the THRO Act which was designed to curtail terrorism risks.

### Consideration

238 I have already discussed the statutory prerequisites and the principles derived from the relevant decisions above. I am satisfied that Mr Hickey is a detained offender (s 34(1)(a)), that the application has been made in accordance with Part 3 of the THRO Act (s 34(1)(b)) and that Mr Hickey is a convicted NSW terrorism activity offender: (s 34(1)(c)). That leaves the remaining question of whether I am satisfied that the matters alleged in the supporting documentation would, *if proved*, justify the making of either a CDO or an ESO pursuant to ss 20 and 34(1) of the THRO Act. That is, am I satisfied to a *high degree of probability* that Mr Hickey poses an *unacceptable risk* of committing a *serious terrorism offence* if not either detained or supervised? If so, I must make orders appointing a psychiatrist and a psychologist to furnish reports to the Court on the results of those examinations: s 38(5) of the THRO Act.

239 I have also had regard to the observations of Johnson J in *State of NSW v Cheema (Preliminary)* [2020] NSWSC 876 at [161] as to how to consider an application such as this:

“[161] It is important not to consider the different pieces of evidence relied upon by the Plaintiff concerning the acts and thought processes of the Defendant in a piecemeal fashion. Like a circumstantial case in a criminal trial, it is necessary to consider the totality of the evidence concerning acts or statements of the Defendant which may shed light upon his thought processes in areas relevant to risk assessment for the purpose of the THRO Act: *R v Hillier* (2007) 228 CLR 618; [2007] HCA 13 at [46] , [48]; *R v Baden-Clay* (2016) 258 CLR 308: [2016] HCA 35 at [47]”.

240 Approaching the application as a whole (rather than as a “mosaic”), it is clear that one of the fundamental difficulties with this application is that Mr Hickey does not fit into any particular category of a potential terrorist. Until recently he ran a successful business employing a number of other electricians. Although



he has a criminal history, he has no convictions for violence. His first incarceration occurred in 2018 in relation to a breach of court orders.

241 There can be no doubt that Mr Hickey's extremist and unpalatable views are long-standing and firmly held. But that is a factor that pulls in opposite directions. The State relies upon that factor as being relevant to his risk; many of his statements supporting racial violence go back to the Stormfront postings in 2013-2015. But Mr Hickey also relies upon that fact in that despite the long-standing nature of his beliefs, he has never committed any crime of violence before let alone any terrorist act. The State relied upon the fact that in October 2011 Mr Hickey observed in relation to Stormfront that "I'm growing disillusioned with the movement. Nobody will get off their ass and do anything." But, as was submitted on his behalf, he did *not* in fact resort to violence at that time as a means to achieve his ends.

242 The nub of the State's position is that the recent videos show an "escalation", and they were in fact said to be key to this application. As discussed above, particular reliance was placed on the "Ebba's Revenge" video and the "How the Left has destroyed Australia" video. They are described as manufactured terrorist propaganda. The former was encrypted and circulated. In this respect Ms Single noted Dr Droogan's expert evidence regarding the fluidity of the right-wing ideology and its opportunistic nature.

243 Having watched the film "How the Left has destroyed Australia" in its entirety I accept that it is a document made by a man who is highly aggrieved and who somewhat irrationally blames the courts and various state officials for his woes. It suggests that there is a conspiracy against him hatched by a combination of magistrates, judges, defence barristers, prosecutors, police and the court reporting services. The film comprises a detailed narrative by Mr Hickey of his unfortunate recent interactions with the authorities. A number of violent images are included in the recording, but Mr Hickey at times expressly disavows therein using violence as an option; a fact that was properly conceded by Ms Single during oral submissions. For example, he states that he had to put any idea of "killdozer" out of his mind (using a bulldozer as a weapon). It is to be accepted that a number of problematic memes are included in the film

including a photo of Mr Tarrant and Hitler but when the film is considered its entirety I am not persuaded that it advocates for any act of terrorism; it is merely a venting of rage at how the system has treated him.

244 I am willing to accept that some of what Mr Hickey has written and created could be viewed as advocating support for violent extremism, in particular his expression of support for the actions of Brendan Tarrant. I also accept the expert opinion of Dr Droogan that many of the statements made over the years by Mr Hickey could be seen as advocating support for violent extremism. I accept Dr Droogan's evidence as to the symbolism of the Nazi iconography used by Mr Hickey including printing swastikas onto the HikDeploy boxes and using the Pepe the Frog logo on the Smerff Electrical website which incorporates an SS uniform. I also accept that over the years Mr Hickey has posted a number of statements which appear to advocate support for violent extremism on Facebook, Pinterest, his work website and other websites.

245 As for the State's reliance upon Mr Hickey's statements concerning the manufacture and distribution of HikDeploy. I would make the following comments.

246 First caltrops (road spikes) were not at the relevant time illegal in QLD. In the "How the Left has destroyed Australia" video relied upon by the State, Mr Hickey expressly identifies the relevant legislation in support of his (correct) position that they were not illegal; although he does also note (correctly) that their use is irresponsible and may cause harm.

247 Secondly, although Mr Hickey was initially convicted and sentenced to 3 years imprisonment in New South Wales for his involvement in the manufacture and distribution of the caltrops, some of the charges eventually had to be withdrawn when it was ascertained that they were not prohibited weapons within the meaning of the legislation in New South Wales. His sentence was reduced as a result.

248 Thirdly, I accept that the "marketing" of the caltrops online was highly irresponsible, and Mr Hickey suggested at one stage that they should be used if being pursued by police. I am also prepared to accept that Mr Hickey was

motivated by revenge and thought this to be an alternative approach to doing something violent.

249 Fourthly, Mr Hickey has not only served his prison time for his involvement in HikDeploy he has served *both* his non-parole period and the head sentence.

250 Fifthly, Mr Hickey was not secretive about the marketing of HikDeploy. It attracted the attention of the mainstream media and there was a segment about it on A Current Affair. He used part of his own surname to market it. I endorse the comments of the sentencing judge that his conduct was dangerous and stupid and showed a clear lack of respect and understanding for the role of Queensland police. But it is not clear to me that the marketing of the calltrops represents advocacy for terrorist acts and/or violent extremism.

251 Having trawled through Mr Hickey's complicated criminal and court history it is apparent that the only two instances of overt racism he has been involved in (other than through the keyboard of his computer) are, his intolerant abuse aimed at the Queensland Islamic Schools (for which he was convicted and sentenced in 2018) and an interaction at a supermarket in 2019 after the Christchurch massacre in which he saw a person apparently of the Muslim faith in the supermarket and suggested to them that New Zealand would be a nice place to be. He was not charged in relation to the second of these incidents. It came to the attention of police because the alleged victim took a photograph of him which was provided to police and Mr Hickey was able to be identified accordingly. Despite the intolerance of these interactions, neither of them could be classified as "serious terrorism offence". Nor was his circulation of the "Ebba's Revenge" recording treated as a terrorist offence.

252 On behalf of the State it was submitted that, when combined with the circulation of the Tarrant video and supportive statements of Tarrant, Mr Hickey's views go further than mere expressions or promulgation of extreme or objectionable political views. But such a submission needs to be considered in the context that Mr Hickey has recently made a number of statements expressly disclaiming violence. In an article titled "Simon Hickey's story" sent to XYZ he complains of the history of harassment he is suffered by the

Queensland government culminating in his custody. The story includes the following:

“I have written to XYZ, Andrew Anglin and the Storm, to draw attention to the insane series of events so that other white workingmen are aware of the tactics employed by Western governments to silence any opposition to their policies. I thought I had nothing to fear from police and government because I wasn't a criminal. I had a 25 year steady work history, a certificate showing no criminal convictions and a reputation for honesty. That meant nothing when they decided to shut me up. I still ended up in jail because I sponsored the Stormer.

Do I regret my association with Anglin and the Stormer? Not at all. I regret the enormous loss and anxiety it has caused myself and my family, but none of that was my doing. We were minding our own business, doing electrical work and poking fun at the Holocaust when these evil parasites force their way into my home and personal life. Even after serious repeated unjustified provocations, I haven't taken any violent action in response. I still believe that our final victory is inevitable and we don't need to resort to those sorts of tactics. *We will be victorious without violence because of our integrity, our righteousness and our persistence.*

(Emphasis added.)

253 On 18 July 2022, Mr Hickey wrote a letter to his father, in response to a letter he received from him the month before. His letter generally addresses his release date, what assistance he may require from his family upon his release, and how he intends to live his life once he is out of prison. Significantly, in this letter Mr Hickey expresses, on several occasions, a desire to live an independent and non-violent lifestyle upon his release. The letter includes the following:

“But this time I think I may have just learned my lesson. I understand now that Australia's slide towards Brazilian living standards is not something I can halt, or have any effect on, so I have made the conscientious decision to ignore it as much as possible from this point forward. Fuck it. I will now make like everyone else and only worry about myself. I am going to resurrect my business, keep my politics completely separate, make a truck load of money and find myself a nice quiet part of the world to hold out in while it all goes to hell. If our people want to rush headlong toward their own replacement then who am I to argue?

...

I am not staying here I know that much. My home is in Melbourne or Queensland, preferably Melbourne. I need to move on with my life and get back to work.

...

I told the (corrections) woman that I am going to try one more time to live a normal life in Australia. *If the authorities refuse to leave me alone then I will*

*have no choice but to leave and find somewhere I can live in peace. I meant it. I hope they afford me this chance.*"

(Emphasis added.)

254 The State's response to Mr Hickey's recent expressions disavowing violence is that he tells people what they want to hear, such as Ms Cruickshank. I accept that Mr Hickey attempted to sanitise and downplay his beliefs when he spoke to Ms Cruickshank. Examples of this include his explanation that he was "racist" but not a "white supremacist", that the "day of the rope" was not literally intended, and that "race war" did not necessarily indicate support for violent action (likening it to the "the war on drugs"). He also told her that he found Brenton Tarrant's manifesto "interesting", but that it did not justify his actions, and said that there were means other than violence that could be used to justify his anti-immigration stance.

255 Although it is to be accepted that Mr Hickey may well have told Ms Cruickshank what she wanted to hear (he would not be the first prisoner to have done so), it is more difficult to contend that he was lying in his letter to his friend and his father referred to above.

256 Turning to the relevant "unacceptable risk" test, it is pertinent to keep in mind that the relevant "unacceptable risk" (of which the court has to be satisfied to a high degree of probability) is that if released without supervision Mr Hickey would not just commit *any* terrorism offence; he must be a risk of committing a "serious terrorism offence".

257 Most of the supporting material before me was directed at establishing that Mr Hickey has advocated for violent extremism and terrorist facts in the past. But, as Ms Single quite properly accepted, incitement to commit a terrorist offence is an offence against s 11.4 of the *Criminal Code*. Similarly, advocating the doing of a terrorist act or the commission of specified terrorism offences is an offence against s 80.2C of the *Criminal Code*. Neither of these offences fall within Pt 5.3 and are therefore outside the definition of "serious terrorism offence" in the THRO Act. Rather, it was submitted that "similar or closely related conduct might readily amount to a threat of action that falls within the definition of "terrorist act", or establishing one of the planning, preparation, recruiting or facilitation offences in Pt 5.3".

258 I have already set out the three possible risk scenarios above at [153 [Ref118460857](#)]-[159 [Ref118460871](#)]. They are:

- (1) That Mr Hickey may “inadvertently or intentionally” influence, encourage or incite vulnerable others to engage in ideologically motivated violence via his expressed attitudes and shared materials; or
- (2) That Mr Hickey may provide support for others to plan, prepare or engage in activities through consultation and advice, and utilising his practical skills, knowledge, and innovations; or
- (3) That Mr Hickey may be triggered by an event related to personal grievance relating to having his occupational and or relationship goals thwarted.

259 It was conceded that the only two potential “serious terrorism offences” applicable to these risk scenarios would be either s 101.5 or s 101.6 of the *Criminal Code* which are headed respectively, “Collecting or making documents likely to facilitate terrorist acts” and “Other acts done in preparation for, or planning, terrorist acts”. The elements of those offence are as follows.

260 Section 101.5 (Collecting or making documents likely to facilitate terrorist acts) is in these terms:

(1) A person commits an offence if:

- (a) the person collects or makes a document; and
- (b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
- (c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:

- (a) the person collects or makes a document; and
- (b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
- (c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

(3) A person commits an offence under subsection (1) or (2) even if:

- (a) a terrorist act does not occur; or
- (b) the document is not connected with preparation for, the engagement of a person in, or assistance in a specific terrorist act; or

(c) the document is connected with preparation for, the engagement of a person in, or assistance in more than one terrorist act.

261 Section 101.6 (Other acts done in preparation for, or planning, terrorist acts) is in these terms:

(1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.

Penalty: Imprisonment for life.

(2) A person commits an offence under subsection (1) even if:

(a) a terrorist act does not occur; or

(b) the person's act is not done in preparation for, or planning, a specific terrorist act; or

(c) the person's act is done in preparation for, or planning, more than one terrorist act.

262 In this regard Ms Single relied upon the observations of the High Court in Minister for *Home Affairs v Benbrika* (2021) 388 ALR 1; [2021] HCA 4 where the majority (Kiefel CJ, Bell, Keane and Steward JJ) made the following observations at [46]:

“[46] Even where the apprehended serious Pt 5.3 offence does not involve as an element the inflicting, or having as an immediate purpose the actual inflicting, of personal injury on a person or persons, the advancement of terrorist ideology can readily be seen to create a milieu which fosters the prospect that personal injury will be suffered by innocent members of the community. A law directed against the implementation of such an ideology (even by preparatory acts) does not lack the character of a law for the protection of the community from harm simply because the law does not include the immediate likelihood or purpose of inflicting personal injury as an element of the offence. It is important that the restriction upon individual liberty involved in the making of a continuing detention order is dependent upon the risk of an offence being ‘unacceptable’ to the judge in light of the facts as they appear at the time he or she is asked to make the order.”

263 The above statement of principle does not assist in identifying how any of the suggested risk scenarios would lead to Mr Hickey committing an offence contrary to either s 101.5 or s 101.6 of the *Criminal Code*. Further, with respect to the first risk scenario the use of the word “inadvertently” is problematic. In relation to the second risk scenario, Mr Hickey has never done anything like that before and in relation to the third risk scenario the fact that Mr Hickey may snap in the future in some way does not necessarily mean that he would do so in the context of the commission of a serious terrorism offence.

264 I have considered the State's submission that the relevant risk is that Mr Hickey could collect or make documents likely to facilitate terrorist acts (s 101.5) or do an act in preparation for or planning a terrorist attack (s 101.6). It is to be accepted that both offences only require Mr Hickey to be "reckless" as to the connection between his conduct and a terrorist act in order to establish the offence. I have also considered the State's submission that the fact that Ms Cruickshank used the word "incite" in the risk scenarios (which does not identify any *serious* terrorism offence) does not *necessarily* confine the scope of this risk to incitement within the meaning of s 11.4 or advocacy within the meaning of s 80.2C of the *Criminal Code*.

265 I have paid close attention to the RAR prepared by Ms Cruickshank. It is to be accepted that she has assessed Mr Hickey as being a "Medium – High" risk of committing a "terrorism offence" but her analysis does not address the statutory requirement of the unacceptable risk of him committing a "serious terrorism offence". Nor do any of her risk scenarios fit easily within that relevant statutory test.

266 As is usually the case, a large number of highly intensive conditions are proposed should the court be minded to place Mr Hickey on an ESO. Significantly, it was conceded on behalf of the State that there is a concern that an order compelling him to remain in NSW, where he has no identified supports, would amplify rather than mitigate his risk (particularly as it is connected with a sense of grievance and persecution). Mr Hickey has expressed a desire to live with his father, something he would not be able to do if he was placed on an ESO.

267 Clearly, if the court was satisfied that the relevant test was met and Mr Hickey should be placed on an ESO, the fact that such an order would make Mr Hickey more disgruntled would not be, of itself, a reason to decline to make the order. But the State's concession that such an order is more likely to increase his risks than mitigate them is a significant one given the objects of the THRO Act. Further, although I accept the State's submission that compelling Mr Hickey to live in NSW where he has no supports or any connection at all must be balanced against the risk he poses if he is released unsupervised in the



community, that “risk” nonetheless pertains to the question of whether he would commit a *serious* terrorist offence, not a risk of engaging in violent extremism *per se*.

268 It is somewhat difficult to ascertain Mr Hickey’s support if he was to be released other than on an ESO. The fact remains that he has family in Victoria and continued to run his Queensland business whilst he was residing in New South Wales before he was again incarcerated. I accept Ms Cruickshank’s suggestion that Mr Hickey’s mother and father are potential sources of pro-social support although I also accept that there is a lack of detail as to their actual capacity to assist at this stage.

269 I have considered Ms Single’s submission that Mr Hickey no longer has the protective factor of his wife and child to prevent him acting on his beliefs in a violent way. The fact that they no longer reside in Australia was seen as a matter militating in favour of the orders being made as that protective factor no longer exists. That submission is difficult to assess on the current state of the evidence. It is not known whether his wife (who apparently shares his racist views) intends to return to Australia. Mr Hickey certainly seemed to be very attached to his daughter and would no doubt understand that if he wanted to have further contact with her, he would have to desist from his recent spiralling conduct. It seems to me that this is ultimately a neutral factor in this application.

270 I have had regard to the observations of Lonergan J in *State of New South Wales v Kiskonen* [2021] NSWSC 915 where her Honour concluded that the defendant in that case was expressing “an extreme political view advocating political change, as opposed to an extremist view advocating illegal violence”. Similarly, Hamill J observed the following in *State of New South Wales v Reginald Collingwood (a pseudonym)* [2021] NSWSC 1365 at [113]:

“.. it is important to remember that the “unacceptable risk” being evaluated is the risk of a particular type of crime; namely a serious terrorism offence. It is not the risk that the defendant may commit any criminal offence, or any crime of violence, or even an extremely grave crime of violence.”

271 There can be no doubt that extremist organisations on the far right are becoming a matter of increasing concern for law enforcement. Only 15 months ago all of the terrorist organisations listed by the Attorney General under the

*Criminal Code* (with the exception of the Kurdistan Workers' Party (PKK)) were terrorist groups expounding various forms of Islamic extremism. Presently, of the 29 organisations listed there are three organisations that might be categorised as far right "white supremacist" groups. They are (along with the date that they were listed): Sonnenkrieg Division (11 August 2021), The Base (10 December 2021) and National Socialist Order (18 February 2022). Nothing in the supporting documentation before me suggested that Mr Hickey has any direct association with any of these groups.

272 Making the evaluative assessment required under an application such as this is not an easy one. To what extent does the fact that Mr Hickey publishes comments in which he praises people such as Mr Tarrant lead to a conclusion that he is an unacceptable risk of being involved in a similar act of terror?

273 Having considered all of the material before me in the context of the relevant statutory test, it seems to me highly probable if not inevitable that Mr Hickey will continue to adhere to his far right views. It may even be the case that he continues to express views that could be seen to advocate terrorist acts and violent extremism. But the THRO Act provides a higher test than that before any orders can be made, even at this preliminary stage.

274 I have come to the conclusion that I am not satisfied that the supporting documentation, if proved, would establish to a high degree of probability that there is an unacceptable risk that Mr Hickey would commit a "serious terrorism offence" if not detained or supervised.

## **ORDERS**

275 In consideration of the above, I make the following orders:

- (1) The Summons is dismissed.
- (2) The plaintiff is to pay the defendant's costs.

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## **Amendments**

07 November 2022 - Coversheet correction