

VII. AUSTRALIA⁸

SUMMARY OF LEGISLATION OF AUSTRALIA RELATED TO TERRORISM

(a) 2002 Counter Terrorism Legislation package

The Australian Government's 2002 Counter Terrorism Legislation package consisted of the following Acts⁹:

- Security Legislation Amendment (Terrorism) Act 2002^{*}
- Suppression of the Financing of Terrorism Act 2002^{*}
- Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002^{**}
- Telecommunications Interception Legislation Amendment Act 2002^{*}
- Border Security Legislation Amendment Act 2002^{*}
- Criminal Code Amendment (Anti-Hoax and Other Measures) Act 2002^{***}

The Acts amended a range of legislation as described below.

Terrorism offences

The *Security Legislation Amendment (Terrorism) Act 2002* inserted the following new offences in the Criminal Code, with effect from 6 July 2002:

- *s. 101.1* – Engaging in a terrorist act (punishable by life imprisonment);
- *subs 101.2(1)* – Providing/receiving training connected with a terrorist act¹⁰ – knowing the connection (25 years imprisonment);
- *subs 101.2(2)* – Providing/receiving training connected with a terrorist act – reckless as to the connection (15 years imprisonment);

⁸ Transmitted to the Secretariat by that Government on 8 April 2003 (S/2003/513, enclosure). Information was also provided in respect of the Crimes (Foreign Incursions and Recruitment) Act 1978, reproduced in Part I of this publication.

⁹ * Received Royal Assent on 5 July 2002.

^{**} Received Royal Assent on 3 July 2002.

^{***} Received Royal Assent on 4 April 2002.

¹⁰ The phrase “connected with a terrorist act” is a shorthand for the phrase “connected with preparation for, the engagement of a person in, or assistance in, a terrorist act”

- *subs 101.4(1)* – Possessing a thing connected with a terrorist act – knowing the connection (15 years imprisonment);
- *subs 101.4(2)* – Possessing a thing connected with a terrorist act – reckless as to the connection (10 years imprisonment);
- *subs 101.5(1)* – Collecting/making a document connected with a terrorist act – knowing the connection (15 years imprisonment);
- *subs 101.5(2)* – Collecting/making a document connected with a terrorist act – reckless as to the connection (10 years imprisonment);
- *s 101.6* – Doing acts in preparation for or planning a terrorist act (life imprisonment).

The phrase “terrorist act” is defined in section 100.1 as an act, or threat of action, that is done or made with the intention of advancing a political, ideological or religious cause; and done or made with the intention of either coercing or influencing by intimidation an Australian government or the government of another country; or intimidating the public or a section of the public. The act must also cause a person serious physical harm or death, or involve serious risk to public health or safety, serious damage to property, or serious interference with an electronic system, or be a threat to do any of these acts.

Advocacy, protest, dissent and industrial action is excluded from the definition of “terrorist act” if not intended to cause serious physical harm to a person; or to cause a person’s death; or to endanger the life of a person, other than the person taking the action; or to create a serious risk to the health or safety of *the public or a section of the public*.

Terrorist organisations offences

The Security Legislation Amendment (Terrorism) Act 2002 inserted the following new offences directed against terrorist organisations in the Criminal Code, with effect from 6 July 2002:

- *subs 102.2(1)* – intentionally directing the activities of a terrorist organisation – knowing it is a terrorist organisation (25 years imprisonment);
- *s 102.3* – intentionally being a member of a terrorist organisation listed by the UN Security Council under a resolution relating to terrorism – knowing it is a terrorist organisation (10 years imprisonment);
- *subs 102.4(1)* – intentionally recruiting a person to a terrorist organisation – knowing it is a terrorist organisation (25 years imprisonment);

- *subs 102.5(1)* – intentionally providing training to or receiving training from a terrorist organisation – knowing it is a terrorist organisation (25 years imprisonment);
- *subs 102.6(1)* – intentionally receiving funds from or making them available to a terrorist organisation – knowing it is a terrorist organisation (25 years imprisonment);
- *subs 102.7(1)* – intentionally providing support or resources to a terrorist organisation that would help it engage in (in effect) terrorist related activities – knowing it is a terrorist organisation (25 years imprisonment).

Each of the offences except the membership offence is mirrored by a subsection (2) offence applicable where the defendant is reckless to the organisation being a terrorist organisation, carrying a maximum penalty of 15 years imprisonment.

The definition of “terrorist organisation” in subsection 102.1(1) is central to the operation of each of the offences. There are two alternate ways in which an organisation can be determined to be a terrorist organisation. First, if a person is prosecuted for one of the terrorist organisations offences, an organisation is a terrorist organisation if a court is satisfied beyond reasonable doubt that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs). Secondly, if the organisation is specified by regulation. A regulation can be made only if the Minister is satisfied on relevant grounds that the organisation is identified in or pursuant to a decision of the United Nations Security Council relating to terrorism and that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs). Regulations cease to have effect two years after their commencement.

Financing of terrorism offence

The *Suppression of the Financing of Terrorism Act 2002* inserts a new section 103.1 into the Criminal Code, which makes it an offence to (intentionally) provide or collect funds, reckless as to whether those funds will be used to facilitate or engage in terrorism. The maximum penalty is life imprisonment. The provision commenced on 6 July 2002.

Financial intelligence provisions

The *Suppression of the Financing of Terrorism Act 2002* amended section 16 of the *Financial Transactions Reports Act 1988*, commencing on 5 July 2002, to oblige cash dealers to report suspected terrorist-related transactions. In addition, the Director of the Australian Transaction Reports and Analysis Centre (Austrac, Australia’s financial intelligence unit), the Australian Federal Police Commissioner and the Director-General of Security have been empowered to disclose financial transaction reports information directly to foreign countries, foreign law enforcement agencies and foreign intelligence agencies, subject to appropriate undertakings to protect the confidentiality of the information, control

the use of the information and ensure that the information is used only for the purpose for which it was communicated.

Asset freezing provisions

The *Suppression of the Financing of Terrorism Act 2002* inserted a new Part 4 of the *Charter of the United Nations Act 1945* (“the Act”) to replace the *Charter of the United Nations (Anti-terrorism Measures) Regulations 2001* as the mechanism to implement Australia’s obligations to freeze terrorist assets under Security Council resolution 1373 (2001). These amendments commenced on 13 December 2002.

Section 20 makes it an offence for a person who holds a “freezable asset” to use or deal with the asset, or allow the asset to be used or dealt with, or facilitate the use of the asset or dealing with the asset. Section 21 makes it an offence to, directly or indirectly, make an asset available to a proscribed person or entity.

A “freezable asset” is an asset owned or controlled by a “proscribed person or entity”, or an asset listed by the Minister under section 15 of the Act, or is derived or generated from such assets. A “proscribed person or entity” is a person or entity listed by the Minister under section 15 or a person or entity proscribed by regulation under section 18. Section 15 provides for the Governor-General to make regulations prescribing the matters of which the Minister must be satisfied before listing a person, entity or asset, to give effect to a decision that the Security Council has made under Chapter VII of the Charter of the United Nations relating to terrorism and dealings with assets. Section 22A provides for the Governor-General to make regulations relating to procedures for the implementation of asset freezing.

Pursuant to sections 15 and 22A, the Governor-General made the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations 2002*. Regulations 2 to 6 provide for the transition between the old and new asset freezing mechanisms and the “proscribed matters” provided for in section 15 (that is, a person, entity or asset referred to in paragraph 1(c) of resolution 1373 (2001). Regulations 7 - 12 provide for the procedure referred to in section 22A.

Air security officer program

The *Security Legislation Amendment (Terrorism) Act 2002* also amended the *Australian Protective Service Act 1987* and the *Crimes (Aviation) Act 1991* to extend the arrest without warrant powers of Australian Protective Services officers to the terrorist and terrorist bombing offences and ensure that these powers may be exercised on intrastate flights in relation to hijacking and other offences in Part 2 of the Crimes (Aviation) Act. The *Australian Protective Service Act 1987* sets out powers in relation to certain offences for the Australian Protective Service, such as the power of arrest without warrant for hijacking on Australian aircraft. The functions and powers of the Australian Protective Service are contained in sections 6 and 13-18 of the *Australian Protective Service Act 1987*.

Review provision

Section 4 of the *Security Legislation Amendment (Terrorism) Act 2002* lays down a requirement for a review of the provisions of the *Security Legislation Amendment (Terrorism) Act 2002*, *Suppression of the Financing of Terrorism Act 2002*, *Border Security Legislation Amendment Act 2002* and the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*. This must be undertaken as soon as practicable after the third anniversary of the commencement of the amendments (i.e., as soon as practicable after 6 July 2005). In the first instance, there will be a review by a committee chaired by a retired judicial officer appointed by the Attorney-General. This committee's report will be forwarded to the Parliamentary Joint Committee on the Australian Security Intelligence Organisation, the Australian Secret Intelligence Service and the Defence Signal Directorate. This second committee is then to undertake a review of the provisions, pursuant to section 29(1)(ba) of the *Intelligence Services Act 2001* and report to Parliament.

(b) Other Legislation

The *Crimes (Aviation) Act 1991* makes the offences provided for in the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo, 1963), the *Convention for the Suppression of Unlawful Seizure of Aircraft* (The Hague, 1970) the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation* (Montreal, 1971) and the *Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation* (Montreal, 1988) criminal offences under Australian law. Penalties for the offences range from two years to life imprisonment, depending upon the gravity of the offence.

The *Crimes (Ships and Fixed Platforms) Act 1992* makes the offences provided for in the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation* (Rome, 1988) and the *Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf* (Rome, 1988) criminal offences under Australian law. Penalties for the offences range from two years to life imprisonment, depending upon the gravity of the offence.

The *Nuclear Non-Proliferation (Safeguards) Act 1987* makes the offences provided for in the *Convention on the Physical Protection of Nuclear Material* (Vienna, 1980) criminal offences under Australian law. The penalty for each of the offences is A\$20,000 or ten years imprisonment or both.

The *Crimes (Hostages) Act 1989* makes the offences provided for in the *International Convention against the Taking of Hostages* (New York, 1979) criminal offences under Australian law. The maximum penalty for the offence of "hostage taking" is life imprisonment.

The *Crimes (Internationally Protected Persons) Act 1976* makes the offences provided for in the *Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents* (New York, 1973) criminal offences under Australian law. Penalties for the offences range from seven years to life imprisonment, depending upon the gravity of the offence.

Section 8 of the *Crimes (Biological Weapons) Act 1976* makes it an offence to develop, produce, stockpile or otherwise acquire or retain:

- microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
- weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict.

The maximum penalty for the offence in the case of a natural person is a fine of A\$10,000 or imprisonment for life or both. In the case of a corporation, the maximum penalty is a fine of A\$200,000.

In addition, Section 12 of the *Chemical Weapons (Prohibition) Act 1994* makes it an offence to intentionally or recklessly:

- develop, produce, otherwise acquire, stockpile or retain chemical weapons; or
- transfer, directly or indirectly, chemical weapons to another person; or
- use chemical weapons; or
- engage in any military preparations to use chemical weapons; or
- assist, encourage or induce, in any way, another person to engage in any activity prohibited to a State Party under the Convention; or
- use riot control agents as a method of warfare.

The penalty for the offence is imprisonment for life.