



Crimes (Foreign Incursions and Recruitment) Act 1978

Act No. 13 of 1978 as amended

This compilation was prepared on 19 December 2005 taking into account amendments up to Act No. 144 of 2005

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

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Contents

1	Short title [see Note 1].....	1
2	Commencement [see Note 1].....	1
3	Interpretation	1
3A	Application of the <i>Criminal Code</i>	2
4	Extension of Act to Territories	2
5	Act not to apply to acts done for defence of Australia.....	2
6	Incursions into foreign States with intention of engaging in hostile activities	2
7	Preparations for incursions into foreign States for purpose of engaging in hostile activities	4
8	Recruiting persons to join organizations engaged in hostile activities against foreign governments	6
9	Recruiting persons to serve in or with an armed force in a foreign State	6
9A	Mode of trial	7
10	Consent of Attorney-General required for prosecutions	8
11	Certificates of Ministers	8
12	Regulations	9
	Notes	11

An Act relating to Incursions into Foreign States and Recruitment for Service in Armed Forces in Foreign States

1 Short title [see Note 1]

This Act may be cited as the *Crimes (Foreign Incursions and Recruitment) Act 1978*.

2 Commencement [see Note 1]

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

armed force does not include an armed force forming part of the Defence Force of Australia.

Australia includes the external Territories.

foreign State means a place outside Australia that is:

- (a) an independent sovereign state; or
- (b) an area of land (whether or not it is self-governing) that is not part of an independent sovereign state.

government, in relation to a foreign State or a part of a foreign State, means the authority exercising effective governmental control in that foreign State or that part of that foreign State.

incite includes urge, aid and encourage and also includes print or publish any writing that incites, urges, aids or encourages.

recruit includes procure, induce and incite.

- (2) A reference in this Act to a part of a foreign State shall be read as a reference to a political subdivision of a foreign State.

3A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

4 Extension of Act to Territories

This Act extends to every Territory.

5 Act not to apply to acts done for defence of Australia

Nothing in this Act applies to any act done by a person acting in the course of the person's duty to the Commonwealth in relation to the defence of Australia.

6 Incursions into foreign States with intention of engaging in hostile activities

- (1) A person shall not:
- (a) enter a foreign State with intent to engage in a hostile activity in that foreign State; or
 - (b) engage in a hostile activity in a foreign State.

Penalty: Imprisonment for 20 years.

- (2) A person shall not be taken to have committed an offence against this section unless:
- (a) at the time of the doing of the act that is alleged to constitute the offence, the person:
 - (i) was an Australian citizen; or
 - (ii) not being an Australian citizen, was ordinarily resident in Australia; or
 - (b) the person was present in Australia at any time before the doing of that act and, at any time when the person was so present, his or her presence was for a purpose connected with that act, or for purposes that included such a purpose.
- (3) For the purposes of subsection (1), engaging in a hostile activity in a foreign State consists of doing an act with the intention of

achieving any one or more of the following objectives (whether or not such an objective is achieved):

- (a) the overthrow by force or violence of the government of the foreign State or of a part of the foreign State;
 - (aa) engaging in armed hostilities in the foreign State;
 - (b) causing by force or violence the public in the foreign State to be in fear of suffering death or personal injury;
 - (c) causing the death of, or bodily injury to, a person who:
 - (i) is the head of state of the foreign State; or
 - (ii) holds, or performs any of the duties of, a public office of the foreign State or of a part of the foreign State; or
 - (d) unlawfully destroying or damaging any real or personal property belonging to the government of the foreign State or of a part of the foreign State.
- (4) Nothing in this section applies to an act done by a person in the course of, and as part of, the person's service in any capacity in or with:
- (a) the armed forces of the government of a foreign State; or
 - (b) any other armed force in respect of which a declaration by the Minister under subsection 9(2) is in force.
- (5) Paragraph (4)(a) does not apply if:
- (a) a person enters a foreign State with intent to engage in a hostile activity in that foreign State while in or with an organisation; and
 - (b) the organisation is a prescribed organisation at the time of entry.
- (6) Paragraph (4)(a) does not apply if:
- (a) a person engages in a hostile activity in a foreign State while in or with an organisation; and
 - (b) the organisation is a prescribed organisation at the time when the person engages in that hostile activity.
- (7) For the purposes of subsections (5) and (6), **prescribed organisation** means:
- (a) an organisation that is prescribed by the regulations for the purposes of this paragraph; or

- (b) an organisation referred to in paragraph (b) of the definition of *terrorist organisation* in subsection 102.1(1) of the *Criminal Code*.
- (8) Before the Governor-General makes a regulation prescribing an organisation for the purposes of paragraph (7)(a), the Minister must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering:
 - (a) a serious violation of human rights; or
 - (b) armed hostilities against the Commonwealth or a foreign State allied or associated with the Commonwealth; or
 - (c) a terrorist act (as defined in section 100.1 of the *Criminal Code*); or
 - (d) an act prejudicial to the security, defence or international relations of the Commonwealth.

7 Preparations for incursions into foreign States for purpose of engaging in hostile activities

- (1) A person shall not, whether within or outside Australia:
 - (a) do any act preparatory to the commission of an offence against section 6, whether by that person or by another person;
 - (b) accumulate, stockpile or otherwise keep arms, explosives, munitions, poisons or weapons with the intention of committing an offence against section 6, whether by that person or by another person;
 - (c) train or drill or participate in training or drilling, or be present at a meeting or assembly of persons with intent to train or drill or to participate in training or drilling, any other person in the use of arms or explosives, or the practice of military exercises, movements or evolutions, with the intention of preparing that other person to commit an offence against section 6;
 - (d) allow himself or herself to be trained or drilled, or be present at a meeting or assembly of persons with intent to allow himself or herself to be trained or drilled, in the use of arms or explosives, or the practice of military exercises, movements or evolutions, with the intention of committing an offence against section 6;

- (e) give money or goods to, or perform services for, any other person or any body or association of persons with the intention of supporting or promoting the commission of an offence against section 6;
 - (f) receive or solicit money or goods, or the performance of services, with the intention of supporting or promoting the commission of an offence against section 6;
 - (g) being the owner, lessee, occupier, agent or superintendent of any building, room, premises or place, intentionally permit a meeting or assembly of persons to be held in the building, room, premises or place with the intention of committing, or supporting or promoting the commission of, an offence against paragraph (a), (b), (c), (d), (e) or (f); or
 - (h) being the owner, charterer, lessee, operator, agent or master of a vessel or the owner, charterer, lessee, operator or pilot in charge of an aircraft, intentionally permit the vessel or aircraft to be used with the intention of committing, or supporting or promoting the commission of, an offence against paragraph (a), (b), (c), (d), (e) or (f).
- (1A) A reference in subsection (1) to the commission of an offence against section 6 is a reference to the doing of an act that would constitute, or would but for subsection 6(2) constitute, an offence against section 6.
- (1B) A person shall not be taken to have committed an offence against this section merely because of doing an act by way of, or for the purposes of, the provision of aid of a humanitarian nature.
- (2) A person shall not be taken to have committed an offence against this section in respect of the doing of an act outside Australia unless:
- (a) at the time of the doing of that act, the person:
 - (i) was an Australian citizen; or
 - (ii) not being an Australian citizen, was ordinarily resident in Australia; or
 - (b) the person was present in Australia at any time before the doing of that act and, at any time when the person was so present, his or her presence was for a purpose connected with that act, or for purposes that included such a purpose.

Penalty: Imprisonment for 10 years.

8 Recruiting persons to join organizations engaged in hostile activities against foreign governments

A person shall not, in Australia, recruit another person to become a member of, or to serve in any capacity with, a body or association of persons the objectives of which are or include any of the objectives referred to in subsection 6(3).

Penalty: Imprisonment for 7 years.

9 Recruiting persons to serve in or with an armed force in a foreign State

- (1) A person shall not, in Australia:
- (a) recruit another person to serve in any capacity in or with an armed force in a foreign State, whether the armed force forms part of the armed forces of the government of that foreign State or otherwise;
 - (b) publish an advertisement, reckless as to whether the advertisement is for the purpose of recruiting persons to serve in any capacity in or with such an armed force;
 - (c) publish an advertisement containing any information:
 - (i) relating to the place at which, or the manner in which, persons may make applications to serve, or obtain information relating to service, in any capacity in or with such an armed force; or
 - (ii) relating to the manner in which persons may travel to a foreign State for the purpose of serving in any capacity in or with such an armed force; or
 - (d) do any other act or thing with the intention of facilitating or promoting the recruitment of persons to serve in any capacity in or with such an armed force.

Penalty:

- (a) if the person is a natural person—\$20,000 or imprisonment for 7 years, or both; or
 - (b) if the person is a body corporate—\$100,000.
- (2) If the Minister has, by instrument signed by the Minister and published in the *Gazette*, declared that it is in the interests of the defence or international relations of Australia to permit the recruitment in Australia, either generally or in particular

circumstances or subject to specified conditions, of persons to serve in or with a specified armed force, or to serve in or with a specified armed force in a particular capacity, subsection (1) does not apply, or does not apply in those circumstances or where those conditions are complied with, as the case may be, to or in relation to recruitment to serve, or the publication of an advertisement containing information with respect to service, in or with that armed force, or in or with that armed force in that capacity, as the case may be.

- (3) If a person recruits another person to enter into a commitment or engagement to serve in any capacity in or with an armed force, the first-mentioned person shall be taken, for the purposes of this section, to recruit that other person to serve in or with that armed force whether or not the commitment or engagement is legally enforceable and whether or not it constitutes a legal or formal enlistment in that force.
- (4) The provisions of section 48 (except paragraphs (1) (a) and (b) and subsection (2)) and of sections 48A, 48B and 49 of the *Acts Interpretation Act 1901* apply, by force of this section, to a declaration made under subsection (2) of this section in like manner as those provisions apply to regulations.
- (5) For the purposes of this section, the publication of an item of news shall be deemed to constitute the publication of an advertisement if the publication was procured by the payment of, or by a promise to pay, money or by the provision of, or by a promise to provide, any other consideration.

9A Mode of trial

- (1) Subject to subsection (2), a prosecution for an offence against this Act shall be on indictment.
- (2) Where the law of a State or Territory makes provision for a person who pleads guilty to a charge in proceedings for the person's commitment for trial on indictment to be committed to a higher court and dealt with otherwise than on indictment, a person charged in that State or Territory with an offence against this Act may be dealt with in accordance with that law.

- (3) A reference in this section to an offence against this Act includes a reference to an offence against:
- (a) section 6 of the *Crimes Act 1914*; or
 - (b) an ancillary offence (within the meaning of the *Criminal Code*);
- that relates to an offence against this Act.

10 Consent of Attorney-General required for prosecutions

- (1) Proceedings for the commitment of a person for trial on indictment for an offence against this Act, or for the summary trial of a person for an offence against this Act, shall not be instituted except with the consent in writing of the Attorney-General.
- (2) Notwithstanding that a consent has not been given in relation to the offence in accordance with subsection (1):
- (a) a person may be charged with an offence against this Act;
 - (b) a person may be arrested for an offence against this Act, and a warrant for such an arrest may be issued and executed; and
 - (c) a person so charged may be remanded in custody or on bail;
- but no further step in proceedings referred to in subsection (1) shall be taken in relation to the offence until such a consent has been given.
- (3) Nothing in subsection (2) prevents the discharge of the accused if proceedings are not continued within a reasonable time.
- (4) A reference in this section to an offence against this Act includes a reference to an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to an offence against this Act.

11 Certificates of Ministers

- (1) In a proceeding against a person for an offence against this Act in relation to a foreign State, a certificate by a Minister, stating that a place or an area specified in the certificate is or is in, or on a specified day or during a specified period was or was in, an independent sovereign state is conclusive evidence of the matters stated in the certificate.

- (2) In a proceeding against a person for an offence against this Act, a certificate by a Minister stating that, if the person had done an act specified in the certificate, being an act alleged to constitute the offence, the person would not have been acting in the course of the person's duty to the Commonwealth in relation to the defence of Australia is *prima facie* evidence of the matters stated in the certificate.
- (3) In a proceeding against a person for an offence against this Act in relation to the government of a foreign State or a part of a foreign State, a certificate by a Minister stating that an authority described in the certificate is, or on a specified day or during a specified period was, in effective governmental control in a specified foreign State, or in a specified part of a foreign State, is *prima facie* evidence of the matters stated in the certificate.
- (3A) In a proceeding against a person for an offence against this Act, a certificate by a Minister, stating that an organisation specified in the certificate was not, on a specified day or during a specified period, an armed force, or part of an armed force, of the government of a foreign State specified in the certificate is *prima facie* evidence of the matters stated in the certificate.
- (4) A reference in this section to an offence against this Act includes a reference to an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, being an offence that relates to an offence against this Act.

12 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Table of Acts**Notes to the *Crimes (Foreign Incursions and Recruitment) Act 1978*****Note 1**

The *Crimes (Foreign Incursions and Recruitment) Act 1978* as shown in this compilation comprises Act No. 13, 1978 amended as indicated in the Tables below.

For all relevant information pertaining to application, saving or transitional provisions *see* Table A.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Crimes (Foreign Incursions and Recruitment) Act 1978</i>	13, 1978	14 Apr 1978	14 Apr 1978	
<i>Crimes Legislation Amendment Act 1987</i>	120, 1987	16 Dec 1987	Part IV (ss. 19–26): 13 Jan 1988 (a)	—
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Law and Justice Legislation Amendment Act 1989</i>	11, 1990	17 Jan 1990	Part 7 (ss. 18–21): 14 Feb 1990 (b)	—
<i>Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001</i>	24, 2001	6 Apr 2001	S. 4(1), (2) and Schedule 14: (c)	S. 4(1) and (2)
<i>Anti-terrorism Act 2004</i>	104, 2004	30 June 2004	1 July 2004	S. 4(2)
<i>Anti-Terrorism Act (No. 2) 2005</i>	144, 2005	14 Dec 2005	S. 4: Royal Assent Schedule 1 (item 1): 15 Dec 2005	S. 4

Act Notes

- (a) The *Crimes (Foreign Incursions and Recruitment) Act 1978* was amended by Part IV (sections 19-26) only of the *Crimes Legislation Amendment Act 1987*, subsection 2(6) of which provides as follows:
- (6) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (b) The *Crimes (Foreign Incursions and Recruitment) Act 1978* was amended by Part 7 (sections 18–21) only of the *Law and Justice Legislation Amendment Act 1989*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (c) The *Crimes (Foreign Incursions and Recruitment) Act 1978* was amended by Schedule 14 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:
- (1) Subject to this section, this Act commences at the later of the following times:
- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- Item 15 commenced on 24 May 2001.

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Title	am. No. 120, 1987
S. 3	am. No. 120, 1987
S. 3A	ad. No. 24, 2001
S. 5	am. No. 120, 1987
Heading to s. 6	am. No. 24, 2001
S. 6	am. No. 120, 1987; No. 24, 2001; No. 104, 2004; No. 144, 2005
S. 7	am. No. 120, 1987; No. 24, 2001; No. 104, 2004
S. 9	am. No. 120, 1987; No. 99, 1988; No. 24, 2001
S. 9A	ad. No. 11, 1990 am. No. 24, 2001
S. 10	am. No. 11, 1990; No. 24, 2001
S. 11	ad. No. 120, 1987 am. No. 11, 1990; No. 24, 2001; No. 104, 2004
S. 12	ad. No. 104, 2004

Table A

Table A

Application, saving or transitional provisions

*Law and Justice Legislation Amendment (Application of Criminal Code)
Act 2001 (No. 24, 2001)*

4 Application of amendments

- (1) Subject to subsection (3), each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

Anti-terrorism Act 2004 (No. 104, 2004)

4 Application of amendments

- (2) The amendment made by item 17 of Schedule 1 does not apply to proceedings for offences alleged to have been committed before the commencement of this Act.

Anti-Terrorism Act (No. 2) 2005 (No. 144, 2005)

4 Review of anti-terrorism laws

- (1) The Council of Australian Governments agreed on 27 September 2005 that the Council would, after 5 years, review the operation of:
 - (a) the amendments made by Schedules 1, 3, 4 and 5; and
 - (b) certain State laws.
- (2) If a copy of the report in relation to the review is given to the Attorney-General, the Attorney-General must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the Attorney-General receives the copy of the report.