

2004-2005

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

ANTI-TERRORISM BILL 2005

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Philip Ruddock MP)

ANTI-TERRORISM BILL 2005

GENERAL OUTLINE

This Bill amends the *Criminal Code Act 1995* (the *Criminal Code*).

The Bill improves the existing strong federal regime of offences and powers targeting terrorist acts. The amendments in the Bill are the result of a review of existing federal legislation that criminalises terrorist activity.

The principal features of the Bill are:

- amendments to the existing offences in the *Criminal Code* to clarify that it is not necessary to identify a particular terrorist act upon proving the offence.

FINANCIAL IMPACT STATEMENT

There is no financial impact flowing directly from the offence provisions in this Bill.

NOTES ON CLAUSES

General

Unless otherwise indicated, any reference to a 'section', 'subsection' or 'paragraph' in these notes is a reference to a section, subsection or paragraph in the *Criminal Code Act 1995* (the *Criminal Code*).

Clause 1: Short title

This is a formal clause which provides for the citation of the Bill. This clause provides that the Bill when passed, may be cited as the *Anti-Terrorism Act 2005*.

Clause 2: Commencement

This clause set out when the various parts of the Bill commence.

Sections 1 to 4 of the Bill (the short title, the commencement, the schedules provision and the review of anti-terrorism laws provision) and anything in the Bill not covered elsewhere in the table in clause 2 will commence on the day the Act receives Royal Assent.

Schedule 1 to the Bill amends offences and definitions in the *Criminal Code*. It is important that these amended offences commence as soon as possible to ensure the offences are interpreted in the way in which they were originally intended.

Clause 3: Schedules

This clause makes it clear that the Schedules to the Bill will amend the Acts set out in those Schedules in accordance with the provisions set out in each Schedule.

Clause 4: Review of anti-terrorism laws

This clause provides for a review of the amendments made by Schedule 1 after five years.

Subclause 4(1) provides that the Council of Australian Governments (COAG) agreed on 27 September 2005 to undertake this review.

Subclause 4(2) provides that if a copy of a report of this review is made available to the Attorney-General, he or she must cause a copy of the report to be laid before each House of Parliament within 15 sitting days after the report is received.

This clause ensures that the COAG agreement to a five-year review of these new laws is enshrined in the legislation. It also ensures that any report on the review of these new laws will be made public.

Schedule 1 – Amendments to terrorism offences

This Schedule amends the terrorism offences in Divisions 101 and 103 of the *Criminal Code*.

Criminal Code Act 1995

Items 1 to 4

These items are interpretative amendments to the existing terrorism offences in Division 101 of Part 5.3 of the *Criminal Code* that clarify that, in a prosecution for a terrorism offence, it is not necessary to identify a particular terrorist act. The amendments will ensure that the policy of the existing offences is implemented in the way originally intended.

The existing offences contain a subsection that provides that a person commits the offence even if ‘the’ terrorist act does not occur. When the offences were originally drafted, it was not the intention that the prosecution would be required to identify a ‘particular’ terrorist act.

The amendments will simply clarify that it is not necessary for the prosecution to identify a specific terrorist act. It will be sufficient for the prosecution to prove that the particular conduct was related to ‘a’ terrorist act.

The amendments will ensure the relevant offences will be available where a person is considering a range of activities that are still in formative stages and not advanced to the point of the details being decided upon. For example, a person or group of persons may be considering a range of activities such as killing persons or detonating a bomb. However, that person or group may not have decided which of the activities will be carried out, nor the time, date or method of such activities. In other words, in proving one of the amended offences it will not be necessary to establish that the person has settled on a particular target, time or date or other specific particulars of the action or threat of action said to constitute the terrorist act. For example, where the person has settled on an action such as destroying a Government building but has not decided on a particular building, time or date this would fall within the concept of a terrorist act.

Item 5

This item is an interpretative amendment to the offence of financing terrorism in subsection 103.1(1) of the *Criminal Code* to clarify that, in a prosecution for this offence, it is not necessary to identify a particular terrorist act.

The amendment will simply clarify that it is not necessary for the prosecution to identify a specific terrorist act. It will be sufficient for the prosecution to prove that the particular conduct was related to ‘a’ terrorist act.