

National security and counter-terrorism law

Australia's national security and terrorism laws aims to prevent acts of terrorism and prosecute those involved in terrorism.

Effective laws are a critical component of Australia's response to threatened or actual terrorist acts.

National Security Information (Criminal and Civil Proceedings) Act 2004 (NSI Act)—This Act gives courts a structure to follow where national security information is disclosed, or is to be disclosed, in a legal proceeding.

Australia's counter-terrorism laws—Responsibility for Australia's counter terrorism laws are shared between our department and the Department of Home Affairs. For the majority of counter terrorism laws, the Department of Home Affairs has policy responsibility and our department has administrative responsibility.

Terrorist act offences—Discover what constitutes a terrorist act offence under Australian law.

Preventing the financing of terrorism—We administer the Criminal Code Act 1995 that makes it illegal to finance terrorism.

Reviews of Australia's counter-terrorism laws—These reviews ensure that people who carry out terrorism are brought to justice. They also contribute to the development of Australia's legal response to the threat of terrorism.

Preventative detention orders—The police can detain people only where there is a threat of an imminent terrorist attack and the order might help prevent it, or immediately after a terrorist act if it is likely vital evidence will be lost.

Control orders—These are protective measures that allow controls to be placed on the movements and activities of people who pose a terrorist risk to the community.

Urging violence and advocating terrorism offences—It is an offence to intentionally urge another person or group to use force or violence:

to overthrow the Constitution, government or lawful authority
or

against a group, or members of a group that is distinguished by race, religion, nationality, national or ethnic origin or political opinion.

It is also an offence to counsel, promote, encourage or urge the doing of a terrorist act or the commission of a terrorism offence where the person intentionally engages in the conduct reckless as to whether another person will engage in a terrorist act or commit a terrorism offence.

Terrorist organizations—These are organizations that:

a court finds is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a terrorist act

the government has listed as a terrorist organisation by regulations.

International counter-terrorism measures—Australia has ratified and implemented, in our national law, 14 of the 16 international counter-terrorism instruments to help prevent terrorist acts, and bring to justice those who commit them.

State and Territory Legislation

A Summit of Commonwealth and State and Territory Leaders (Leaders' Summit), held in Canberra on 5 April 2002, resulted in the State governments referring their powers over terrorism offences to the Commonwealth. The Criminal Code Amendment (Terrorism) Act 2003 provides for the Commonwealth to legislate in this area, with agreement from the States for any future amendments. As a result, there is little State and Territory legislation relating to anti-terrorism, although in September 2005 several State governments announced new proposals, including preventative detention measures.

Australian Capital Territory

Terrorism (Extraordinary Temporary Powers) Act 2006

Terrorism (Extraordinary Temporary Powers) Bill 2006. Exposure draft. Assembly Committee report.

Related legislation includes: Civil Law (Wrongs) Act 2002 (Meaning of act of terrorism); Workers Compensation Act 1951(Terrorism cover temporary reinsurance fund)

New South Wales

Crimes Act 1900 Part 6B (Membership of a terrorist organisation)

Surveillance Devices Act 2007

Terrorism (Commonwealth Powers) Act 2002 (assent 5 December 2002); Explanatory Note

Terrorism (Police Powers) Act 2002 (assent 5 December 2002); Explanatory Note

Terrorism (Police Powers) Regulation 2005

Related legislation:

Bail Act 1978 (s.8A Presumption against bail for terrorism offences)

Government Information (Public Access) Act 2009

Workers Compensation Act 1987 (Terrorism Re-insurance Fund)

Northern Territory

Criminal Code Act 1983

Schedule I, Part III, Division 2 Terrorism (sections 50-55)

Terrorism (Northern Territory) Request Act 2003

Terrorism (Emergency Powers) Act 2003

Queensland

Terrorism (Preventative Detention) Act 2005

Terrorism (Commonwealth Powers) Act 2002 (assent 13 December 2002; Explanatory Notes)

Police Powers and Responsibilities Act 2000 Part 2 (Surveillance powers)

Related legislation: Crime and Misconduct Act 2001; Financial Management Standard 1997; Motor Accident Insurance Act 1994

South Australia

Terrorism (Preventative Detention) Act 2005

Terrorism (Preventative Detention) (Supreme Court) Rules 2006

Terrorism (Police Powers) Act 2005

Terrorism (Police Powers) Regulations 2006

Terrorism (Police Powers) (Supreme Court Rules) 2006

Terrorism (Commonwealth Powers) Act 2002 (assent 19 December 2002)

Related legislation: Emergency Management Act 2004

Tasmania

Terrorism (Preventative Detention) Act 2005

Terrorism (Commonwealth Powers) Act 2002 (assent 19 December 2002)

Classification (Publications, Films and Computer Games) Enforcement Act 1995
Sections 3, 10 (publications which promote, incite or encourage terrorism)

Related legislation: Motor Accidents (Liabilities and Compensation) Act 1973; Workers Rehabilitation and Compensation Act 1988;

Victoria

Investigative, Enforcement and Police Powers Acts (Amendment) Act 2005

Terrorism (Commonwealth Powers) Act 2003

Terrorism (Community Protection) Act 2003; Explanatory Memorandum

Terrorism (Community Protection) (Prescribed Standards) Regulations 2007

Terrorism (Community Protection) (Chemicals and Substances) Regulations 2005

Petroleum (Submerged Lands) Act 1982
Sections 151B. Emergency periods

Western Australia

Terrorism (Preventative Detention) Act 2006

Terrorism (Extraordinary Powers) Act 2005

Gallop to introduce nation's toughest new counter-terrorism laws (September 2005)

Terrorism (Commonwealth Powers) Act 2002 (assent 14 January 2003) (Explanatory Memorandum)

Related legislation:

Workers' Compensation and Rehabilitation (Acts of Terrorism) Act 2001

International Law

United Nations Action to Counter Terrorism

Select UN documents dealing with terrorism before and after 11 September, including Security Council Resolution 1373, 28 September 2001, on international cooperation to combat threats to international peace and security caused by terrorist acts

Security Council Resolution 1624 (2005) on prevention of incitement to terrorism

Terrorist Lists: Monitoring Proscription, Designation and Asset-freezing

Information and analysis by Statewatch of the lists of banned terrorist organisations maintained by the UN, EU, UK, & US

UN Security Council Committee established pursuant to resolution 1267 (1999) concerning Afghanistan
Includes the UN list of terrorist organisations (list of individuals and entities belonging to or associated with the Taliban and the Al-Qaida organizations) used by the Australian government to proscribe (ban) terrorist organisations

The right of self-defence under international law: responding to the terrorist attacks of 11 September (Angus Martyn, Australian Dept of the Parliamentary Library)

Council of Europe

Guidelines on human rights and the fight against terrorism, 2002 and 2005

Country profiles on counter-terrorist capacity

European Union

Some good websites for keeping up to date include:

Statewatch

Information and analysis of European laws on terrorism

European Commission. Crisis management and Fight against Terrorism

Terrorism: the European Union's Position

Detailed information from the Delegation of the European Commission to the United States, with links to key documents

List of terrorist organisations with which financial dealings are restricted by member states

Canada

Legislation

The main anti-terrorism offences are in Part II.1 of the Criminal Code (sections 83.01+). Two major amending acts which formed the basis of this legislation are: Anti-terrorism Act 2001, chapter 41. [Analysis of the Bill (Intranet copy) and Background on the Bill (from LEGISinfo - Canadian Parliamentary Library)] and the Public Safety Act 2004, chapter 15[Background on the Bill (from LEGISinfo)].

Other Canadian Information

K. Roach, 'A comparison of Australian and Canadian anti-terrorism laws.' University of NSW Law Journal, vol. 30, 2007, pp. 53-85

Rights, Limits, Security: a Comprehensive Review of the Anti-Terrorism Act and Related Issues, March 2007 (Canada. Parliament. House of Commons. Standing Committee on Public Safety and National Security. Subcommittee on the Review of the Anti-terrorism Act)

National Security and Human Rights Concerns in Canada: a Survey of Eight Critical Issues in the Post-9/11 Environment(Wesley K. Wark, 2006)

The Impact of Anti-Terrorism Legislation on Charities: The Shadow of the Law by Terrance S. Carter, Carter & Associates, 2005. Detailed overview of anti-terrorism legislation

Carter and Associates (Law Firm)

This site provides information, articles and resource materials dealing with anti-terrorist and associated legislation in Canada

List of banned terrorist organisations in Canada (Public Safety Canada)

New Zealand

The main act is the Terrorism Suppression Act 2002 (formerly Terrorism (Bombings and Financing) Suppression Bill 2002). Commentaries on the law include:

New Zealand's Anti-Terrorism Campaign: Balancing Civil Liberties, National Security, and International Responsibilities (John E Smith)

Detailed examination of anti-terrorism legislation with historical perspective and international comparisons (91 pages)

Crime and terror: New Zealand's criminal law reform since 9/11 (A. Conte, New Zealand Universities Law Review, v.21, December 2005, pp. 635-664). Available within Parliament only.

The Laws of New Zealand>Public Safety>Part VII New Zealand's Treaty Obligations>(39) Compliance with International Treaty Obligations>Suppression of Terrorism. Available within Parliament only.

United Kingdom

The main UK legislation is, unfortunately, spread over several acts, none of which appears to be published in an up to date form on the internet. They are the Terrorism Act 2000, Anti-terrorism, Crime and Security Act 2001, Prevention of Terrorism Act 2005, Terrorism Act 2006 and the Counter-Terrorism Act 2008. Copies of these acts may be found on the LexisNexisAU UK Statute Law Database.

More information may be found on the Home Office website which includes texts of legislation, reviews on the operation of the legislation, as well as the List of banned terrorist organisations in the UK. See also Halsbury's Laws of England > Criminal Law Evidence & Procedure (vol 11) > 5. Offences against the state or security > 6. Prevention of terrorism.

United States

The United States already had anti-terrorism legislation before 11 September 2001 and after that date passed two major acts: the USA Patriot Act 2001 (Bill no. H.R. 3162; Public Law no: 107-56), and the Homeland Security Act 2002 (Bill no. H.R. 5005; Public Law no: 107-296) which created a new Department of Homeland Security to oversee national security matters previously the responsibility of 22 separate agencies. Current terrorism offences are reprinted mainly in the US Code, Title 18, Chapter 113B.

Analysis and background on legislation

Congressional Research Service reports

The USA PATRIOT Act: a legal analysis (C. Doyle)

USA PATRIOT Improvement and Reauthorization Act of 2005: a legal analysis (B. Yeh, C. Doyle, CRS)

Homeland Security Act of 2002: Legislative History and Pagination Key (S. Gressle)

Terrorism and the law of war: trying terrorists as war criminals before military commissions (J. Elsea)

Internet Surveillance Law After the USA Patriot Act: The Big Brother That Isn't (O. Kerr, 69 pages)

Forfeiting "Enduring Freedom" for "Homeland Security": A Constitutional Analysis of the USA Patriot Act and the Justice Department's Anti-Terrorism Initiatives (J. Whitehead, S. Aden, 53 pages)

Other resources

List of banned terrorist organisations in the US

US Department of Justice. Terrorism Page

Journal of National Security Law & Policy, 2005+.
Full text articles on terrorism law and related issues

MIPT Lawson Police Library

Department of Defense page on military commissions
Links to legal documents, including David Hicks' charge sheet and trial documents

Other Countries

Counter-Terrorism Legislation and Practice: A Survey of Selected Countries (UK Foreign and Commonwealth Office, 2005)

Covers Australia, Canada, France, Germany, Greece, Italy, Norway, Spain, Sweden, USA

Country reports to the UN Security Council Counter Terrorism Committee re legislation etc passed to implement Council Resolution 1373 of 2001 and resolution 1624 of 2005

Country reports on terrorism (previously Patterns of global terrorism) (US Dept of State)
Annual overview of terrorist incidents and organisations since 1995

South Asia Terrorism Portal

Maintained by the Institute for Conflict Management, India, this site provides a wide range of documents, legislation and analysis for several south Asian countries.

International Commission of Jurists

Information on the ICJ Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights.
Includes text of the E-bulletin on counter-terrorism & human rights and the 2009 Final Report of the Eminent Jurists Panel survey of over 40 countries

Other Resources

Attorney-General's Department. Australian National Security website
Has texts of terrorism legislation, media releases and related links to treaties, etc.

Department of Foreign Affairs. International Counter Terrorism

The website of the Department dealing with international aspects of terrorism. Contains media releases and legal documents relating to Australia's implementation of UN Security Council Resolution 1373 (2001) requiring States to take measures to combat terrorism and to freezing of terrorist assets

Gilbert + Tobin Centre of Public Law

Has text of articles, submissions and analysis of anti-terrorism legislation.

International Commission of Jurists, Australian Section. Counter-Terrorism and Human Rights webpage.

NSW Council for Civil Liberties. Terrorism webpage.

A Research Guide to Cases and Materials on Terrorism (May 2006), compiled by Andrew Grossman on Globalex. Despite its title, it concentrates on US and UK material.

Monash University. Global Terrorism Research Centre. Established in 2006, its mission is to 'generate cutting edge globally relevant insights into terrorism, counter-terrorism, cultural conflict and cooperation that is internationally and nationally significant'.

Department of the Prime Minister and Cabinet. Counter-terrorism White Paper. Securing Australia - protecting our community(2010). Sets out Australia's counter-terrorism objectives and the means by which the government will pursue them.

Department of the Prime Minister and Cabinet. Strong and secure: a strategy for Australia's national security (January 2013). Provides the overarching framework to guide Australia's national security efforts over the next five years.