

Agreement on Counter-terrorism Laws

25 June 2004

This agreement is entered into on 25 June 2004 by:

The Commonwealth of Australia
The State of New South Wales
The State of Victoria
The State of Queensland
The State of Western Australia
The State of South Australia
The State of Tasmania
The Australian Capital Territory
The Northern Territory of Australia.

Recitals

1. The Prime Minister, Premiers and Chief Ministers agreed on 5 April 2002 to take whatever action is necessary to ensure that terrorists can be prosecuted under the criminal law, including a reference of power so that the Commonwealth may enact specific, jointly-agreed legislation. It was agreed that the new Commonwealth legislation will incorporate roll back provisions to ensure that it does not override State or Territory law where that is not intended, and that the Commonwealth will have power to amend the new legislation in accordance with provisions similar to those which apply under Corporations arrangements. It was further agreed that any amendment based on the referred power will require consultation with, and agreement of, States and Territories, and that this will be contained in the legislation.
2. The Commonwealth subsequently enacted legislation designed to enhance Australia's capacity to deal with terrorists, including certain Federal offences contained in Part 5.3 of the Commonwealth Criminal Code.
3. The parties consider it appropriate to facilitate comprehensive national application of those offences by means of State references in accordance with paragraph 51 (xxxvii) of the Commonwealth Constitution.
4. The parties consider it appropriate to facilitate agreement in relation to amendment of those offences from time to time by the Commonwealth Parliament by means of this agreement.
5. The parties also consider it appropriate to facilitate agreement in relation to regulations specifying terrorist organisations for the purposes of Part 5.3 of the Commonwealth Criminal Code by means of this agreement.
6. This agreement sets out a process, consistent with undertakings given to the States and Territories by the Commonwealth, for obtaining the States' and Territories' agreement to amendments and regulations which may be proposed.

The parties agree:

Part 1 Preliminary

1.1 Definitions

(1) In this agreement:

Commonwealth means the Commonwealth of Australia;

express amendment means the direct amendment of the text of the legislation by Commonwealth Acts, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect other than as part of the text of the legislation;

initiate, in relation to the making of legislation, includes introduction in the Commonwealth Parliament and other processes leading to enactment;

party means the Commonwealth, or a referring State or a Territory that is a party to this agreement;

referring State means a State which:-

(a) in accordance with paragraph 51 (xxxvii) of the Commonwealth Constitution, has referred matters to the Commonwealth Parliament sufficient to enable the following legislation to extend, of its own force, to the State:

(i) Part 5.3 of the Commonwealth Criminal Code, as enacted by the Commonwealth Parliament on 27 May 2003, and

(ii) express amendments to Chapter 2 and Part 5.3 of the Commonwealth Criminal Code after that date, and

(b) has not withdrawn either or both of the referred matters covered by subparagraphs (a) (i) and (ii);

State means a State of the Commonwealth; and

Territory means the Australian Capital Territory or the Northern Territory.

(2) In this agreement, a reference to an Act, whether of the Commonwealth or a State, includes a reference to:

(a) that Act as amended and in force for the time being; and

(b) an Act passed in substitution for the Act.

Part 2 Effect and operation of agreement

2.1 Commencement

This agreement comes into operation when it has been signed on behalf of all parties.¹

2.2 Amendment of Agreement

This agreement may be varied only by the unanimous decision of the parties.

¹ The agreement was signed by all parties on 25 June 2004.

Part 3 Legislation

Division 1 Preliminary

3.1 Purpose of this Part

- (1) The purpose of this Part is to preserve and promote the legislative scheme that the parties are enacting for the punishment of persons participating in terrorism or terrorist acts.
- (2) This Part establishes procedures for consultation and agreement between the parties before:
 - (a) the enactment of any legislation that would amend or alter Chapter 2 or Part 5.3 of the Commonwealth Criminal Code (to the extent that amendments of Chapter 2 are intended to apply only to Part 5.3, and not to be of general application to Commonwealth offences); and
 - (b) the making of any regulation specifying a terrorist organisation for the purposes of Part 5.3 of the Commonwealth Criminal Code.

[Note: Limitation to amendments of Chapter 2 that would apply only to Part 5.3 reflects 100.8 of the Criminal Code as amended by the Criminal Code Amendment (Terrorism) Act 2003.]

3.2 Nature of the legislative scheme

The legislative scheme agreed to by the parties involves:

- (a) the enactment by State Parliaments of legislation referring certain matters to the Commonwealth Parliament in accordance with paragraph 51 (xxxvii) of the Constitution; and
- (b) the re-enactment by the Commonwealth Parliament of Part 5.3 of the Commonwealth Criminal Code, partly in reliance on the State referrals mentioned in paragraph (a); and
- (c) the possible amendment from time to time of Chapter 2 and Part 5.3 of the Commonwealth Criminal Code in accordance with this agreement.

Division 2 Alterations of Chapter 2 and Part 5.3 of the Commonwealth Criminal Code

3.3 Commonwealth legislation relating to Chapter 2 and Part 5.3 of the Commonwealth Criminal Code

- (1) Except as provided by subclause (2), the Commonwealth will not introduce a Bill or make subordinate legislation that would repeal or amend Chapter 2 or Part 5.3 of the Commonwealth Criminal Code unless, before its introduction or making:
 - (a) the other parties have been consulted about it; and

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- (b) except as provided by subclause (3), a majority of the other parties, including at least four States, have approved it.

[Note: For the avoidance of doubt, a regulation specifying a terrorist organisation for the purposes of Part 5.3 of the Criminal Code as amended by the Criminal Code Amendment (Terrorism) Act 2003 is not covered by this provision; a regulation made for the purpose of section 100.7 of the Criminal Code is taken to be covered by this provision.]

- (2) If a Bill contains amendments to Part 5.3 of the Commonwealth Criminal Code that the Prime Minister nominates as urgent amendments, the Commonwealth may introduce the Bill before the requirements set out in subclause (1) are fulfilled but must not seek the making of the amendments unless those requirements are fulfilled.
- (3) Subclause (1) applies to a Bill or subordinate legislation that repeals or amends Chapter 2 only to the extent that the repeal or amendment applies only to Part 5.3.
- (4) The Commonwealth will provide the other parties with the text of the proposed legislation.
- (5) The Commonwealth is not obliged to introduce, make or support any legislation, including subordinate legislation, or to proceed with any legislative proposal, including a proposal relating to subordinate legislation, with which it does not concur.
- (6) If approval is sought for amendments to a Bill that is at that time before the Commonwealth Parliament, the Commonwealth will use its best endeavours to give the other parties a reasonable time to consider and to comment on the proposed amendments.
- (7) If approval is sought for amendments to a Bill that is at that time before the Commonwealth Parliament, then the other parties will use their best endeavours to respond within a time frame nominated by the Commonwealth.
- (8) Approval for amendments must be sought, and responses from other parties must be provided, through the Prime Minister and Premiers and Chief Ministers.

Division 3 Regulations specifying terrorist organisations for the purposes of Part 5.3 of the Commonwealth Criminal Code

3.4 Consultation on regulations specifying terrorist organisations

- (1) Before making a regulation specifying a terrorist organisation for the purposes of Part 5.3 of the Commonwealth Criminal Code, the Commonwealth will consult the other parties about it.
- (2) If a majority of the other parties object to the making of a regulation specifying a terrorist organisation within a time frame nominated by the Commonwealth and provide reasons for their objections, the Commonwealth will not make the regulation at that time.

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- (3) The Commonwealth will provide the other parties with the text of the proposed regulation and will use its best endeavours to give the other parties a reasonable time to consider and to comment on the proposed regulation.
 - (4) The Commonwealth will also provide the other parties with a written brief on the terrorist-related activities of the organisation to be specified by the regulation and offer the other parties an oral briefing by the Director-General of Security.
 - (5) The other parties will use their best endeavours to respond within a time frame nominated by the Commonwealth.
 - (6) Approval for regulations specifying terrorist organisations must be sought, and responses from other parties must be provided, through the Prime Minister and Premiers and Chief Ministers.

Part 4 Ceasing to be a party

4.1 State or Territory ceasing to be a party

- (1) The failure of a State or Territory to remain a party does not terminate this agreement.
- (2) If a State or Territory ceases to be a party, this agreement will remain in force in relation to the remaining parties.
- (3) If a State or Territory ceases to be a party, the Commonwealth will, within three months, convene a meeting of the remaining parties for the purpose of negotiating such variations to this agreement as are necessary or convenient to take account of that fact (including variations relating to the voting arrangements).

Signed for and on behalf of each of the parties by:

The Honourable John Winston Howard MP)
Prime Minister of the Commonwealth of Australia)

The Honourable Robert John Carr MP)
Premier of New South Wales)

The Honourable Stephen Phillip Bracks MP)
Premier of Victoria)

The Honourable Peter Beattie MP)
Premier of Queensland)

The Honourable Michael Rann MP)
Premier of South Australia)

The Honorable Dr Geoff Ian Gallop MLA)
Premier of Western Australia)

The Honourable Paul Lennon MHA)
Premier of Tasmania)

Jonathon Donald Stanhope MLA)
Chief Minister of the Australian Capital Territory)

The Honourable Clare Martin MLA)
Chief Minister of the Northern Territory)