



**Australian Government**  
**Attorney-General's Department**

# **Australia's counter-terrorism laws**

QUESTIONS AND ANSWERS



This pamphlet is a reference to help explain Australia's counter-terrorism laws.

There are five main sections to this pamphlet:

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## Terrorist act offences and how they apply

Australia's terrorist act offences are contained in the *Criminal Code Act 1995*.

### What is a terrorist act?

A 'terrorist act' is an act, or a threat to commit an act, that is done with the intention to coerce or influence the public or any government by intimidation to advance a political, religious or ideological cause, and the act causes:

- death, serious harm or endangers a person
- serious damage to property
- a serious risk to the health or safety of the public, or
- seriously interferes with, disrupts or destroys critical infrastructure such as a telecommunications or electricity network.

A terrorist act does not cover engaging in advocacy, protest, dissent or industrial action where a person does not have the intention to urge force or violence or cause harm to others.

If found guilty of committing a terrorist act, a person could face up to life imprisonment.

### What is a terrorist act offence?

The terrorist act offences mean it is an offence to:

- commit a terrorist act
- plan or prepare for a terrorist act
- finance terrorism or a terrorist
- provide or receive training connected with terrorist acts
- possess things connected with terrorist acts, or
- collect or make documents likely to facilitate terrorist acts.

A person may be convicted of a terrorist act offence if the person intends to commit one of these offences or if the person was reckless as to whether his or her actions would amount to a terrorist act.

For example, a person may be found guilty of a terrorist act offence where the person intentionally prepared or planned the commission of a terrorist act but did not actually commit the terrorist act themselves.

A person may still commit a terrorist act offence even though a terrorist act did not occur.

### What does it mean to have an intention to do something or to be reckless about something?

A person has intention with respect to conduct if he or she means to engage in that conduct. A person has intention with respect to a circumstance if he or she believes that it exists or will exist. A person has intention with respect to a result if he or she means to bring it about or is aware that it will occur in the ordinary course of events.

A person is reckless with respect to a result or a circumstance if the person is aware of a substantial risk that the result or circumstance will exist and having regard to the circumstances known to the person, it is unjustifiable to take the risk.

## Terrorist organisations and related offences

Australia's terrorist organisation offences are contained in the *Criminal Code Act 1995*.

### What is a terrorist organisation?

A terrorist organisation is an organisation that:

- a court finds is either directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act, or
- an organisation that has been listed by the Government.

### When can the Government list a terrorist organisation?

The Government can list an organisation as a terrorist organisation if it advocates terrorism or engages in preparing, planning, assisting or fostering the doing of a terrorist act.

An organisation advocates terrorism if it directly or indirectly:

- counsels or urges the doing of a terrorist act
- provides instruction on the doing of a terrorist act, or
- directly praises the doing of a terrorist act, where there is a substantial risk that this praise might lead a person to engage in a terrorist act.

Before an organisation can be listed, the Attorney-General must be satisfied on reasonable grounds that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

When the Government decides to list an organisation as a terrorist organisation, that decision is publicly reviewed by the Parliamentary Joint Committee on Intelligence and Security. Any person who wishes to raise any issues with the decision to list an organisation may submit

their objections or concerns to the Parliamentary Joint Committee. More information on the Parliamentary Joint Committee's reviews of the listing of organisations can be found at [www.aph.gov.au](http://www.aph.gov.au) under 'Committees'.

The listing of an organisation ceases to have effect three years after its commencement, or if the Attorney-General ceases to be satisfied that the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act, whichever occurs first.

Terrorist organisations listed in Australia can be found on the National Security website at [www.nationalsecurity.gov.au](http://www.nationalsecurity.gov.au) under 'What Governments are doing'.

### What offences apply in relation to terrorist organisations?

It is an offence to:

- be a member of
- direct the activities of
- recruit for
- train or receive training from
- acquire funds for, from or to, or
- provide support to a terrorist organisation.

Providing support to a terrorist organisation means any support or resources that are intentionally provided to help the organisation prepare, plan, assist in or foster the doing of a terrorist act.

It is also an offence to associate with a listed terrorist organisation. Associating with a listed terrorist organisation is prohibited where the association occurs two or more times, the association provides support to the organisation and the person intends that the support assists the listed organisation to expand or to continue to exist. However, a person would not commit the association offence if he or she is associating with a close family member for the purposes of a family or domestic matter and importantly,

a person's cultural background will be taken into account in determining whether something is a family or domestic matter.

There are also exemptions from the association offence if the association occurs during the course of religious worship in a public place, such as a mosque or church.

To be found guilty of these offences, a person must either have known the relevant organisation was a terrorist organisation, or have been reckless as to whether it was a terrorist organisation.

However, in order to commit the offence of being a member of a terrorist organisation, the person must know they are a member of a terrorist organisation.

If a person is found guilty of associating with a terrorist organisation, the maximum penalty is three years imprisonment or if a person is found guilty of being a member of a terrorist organisation, the maximum penalty is 10 years imprisonment. If found guilty of one of the other terrorist organisation offences, a person may be imprisoned for up to 25 years.

### **Can a person commit a terrorist organisation offence where the organisation has not been listed by the Government?**

A person may commit a terrorist organisation offence even if the Government has not listed the organisation as long as that organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act.

In prosecuting the terrorist organisation offence, the prosecution would need to prove beyond reasonable doubt to a court that the organisation is directly or indirectly engaged in terrorism. In addition, the prosecution would have to prove that the person either knows that the organisation is a terrorist organisation or is aware there is a substantial risk that the organisation is involved in terrorist activity.

## **Preventative detention and when it applies**

### **When can the police preventatively detain a person?**

The police can detain people under preventative detention orders only where there is a threat of an imminent terrorist attack or immediately after a terrorist attack has occurred.

Individuals can be detained if it is necessary to prevent an imminent terrorist act or if it is likely vital evidence in the aftermath of a terrorist act will be lost.

Under Commonwealth law, the maximum amount of time a person can be preventatively detained is 48 hours. Under State and Territory laws, a person can be detained for up to 14 days. Importantly, even when a combination of the Commonwealth and State or Territory preventative detention regimes are applied, the maximum time a person can be preventatively detained is 14 days.

A person detained under a preventative detention order has the right:

- to be treated humanely and not be subjected to cruel, inhuman or degrading treatment
- to contact a lawyer
- to contact family members and employers to let them know they are safe
- to not be questioned
- to have a copy of the preventative detention order, which contains a summary of the reasons for making the order
- to an interpreter if they have difficulty with English.

Children under 16 years of age cannot be detained. A person that is at least 16 years of age but under 18 can be detained but must be detained separately from adults. They can also have a parent or guardian visit them while they are being detained.

## Investigating a terrorism offence

If you or someone in your care is detained and/or questioned by the police, you will require more detailed advice than that provided in this pamphlet.

### When and how can the police detain a person for questioning when investigating terrorism?

The Commonwealth Crimes Act 1914 enables the police to arrest and detain a person for questioning where there are reasonable grounds to believe the person has committed a Commonwealth offence.

The police can question a person for an initial period of four hours (or two hours for persons who are or appear to be under 18 years, or are Aboriginal or Torres Strait Islander), which can be extended with the approval of a judicial officer to a maximum of 12 hours, or, in the case of a terrorism offence, to a maximum of 24 hours.

The questioning time is able to be suspended to enable the person to rest, receive medical attention, speak to a lawyer or other representative or communicate with a friend, relative, interpreter or relevant consular officer if the person is not an Australian citizen.

In the case of a terrorism offence, a judicial officer may also approve additional periods of time where it is necessary for police to collect and analyse information from overseas authorities, operate between different time zones or translate material. During these additional periods of time, questioning must be suspended.

In addition to the requirement that any extension of the questioning period or additional detention for the purposes of investigation be approved by an independent judicial officer, there are a range of other safeguards in the legislation. These safeguards

include the right for a suspect to have a lawyer present during questioning and the right to be treated with humanity and respect for human dignity.

### What about questioning and detention by ASIO?

The Australia Security Intelligence Organisation (ASIO) can question, and in limited circumstances detain, people in order to gather information for preventing terrorist attacks.

ASIO must have a warrant issued by a federal judge or federal magistrate before it can use its questioning and detention powers.

A person can be detained for up to seven continuous days and they can be questioned for a maximum period of 24 hours, or 48 hours if they need an interpreter. Children under 16 years of age cannot be detained or questioned by ASIO.

A person who is questioned or detained by ASIO has the right:

- to be treated humanely and not be subjected to cruel, inhuman or degrading treatment
- to have access to a lawyer
- to make a complaint at any time about ASIO or the Australian Federal Police to the Inspector-General of Intelligence and Security or the Commonwealth Ombudsman
- to contact a parent or guardian if the person is 16 or 17 years of age and have their parent or guardian present during questioning.

Under an ASIO questioning and detention warrant a person is entitled to contact a lawyer for legal advice.

A person who is the subject of an ASIO questioning, or questioning and detention, warrant:

- must answer all questions permitted by the warrant
- must surrender their passports
- must not leave Australia without permission
- must not tell others, while the warrant is on foot, that they are being questioned or detained by ASIO, unless they are permitted to do so

- must not tell others, for a period of two years after the expiry of the warrant, about any operational information relating to the warrant, unless they are permitted to do so.

The penalty for not complying with these conditions is five years imprisonment.

It is important to understand that if a person has been questioned by ASIO they cannot talk about it.

If you or someone in your care is subject to questioning by ASIO, you will require more detailed advice than that provided in this pamphlet.

## Preventing the financing of terrorism

### What does it mean to finance terrorism?

Financing terrorism involves the intentional collection or provision of funds (including on behalf of another person) and recklessness as to whether the funds will be used to facilitate or engage in a terrorist act.

It does not matter if a terrorist act does not occur, or if the funds will not be used for a specific terrorist act or for more than one terrorist act.

### Can a person be convicted of financing terrorism if he or she donates to a charity?

If the person making the donation is aware there is a substantial risk that the donation will be used for terrorism purposes and it is unjustifiable to take that risk in the circumstances, that person could be convicted of financing terrorism.

### What is being done in Australia to enforce laws preventing the financing of terrorism?

Australia has a special agency, the Australian Transactions and Reports Analysis Centre (AUSTRAC), that monitors bank accounts and the movement of money. This means the chances of catching people involved in financing terrorism are high.

It is also possible to have bank accounts frozen in Australia if the funds in such accounts belong to, or are derived from, a listed terrorist organisation.

# Explaining control orders

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## What is a control order?

A person can be subject to a control order if it substantially assists in preventing a terrorist attack or if the person has trained with a listed terrorist organisation.

Control orders must be issued by a court.

A control order can stop a person from:

- being in certain areas or leaving Australia
- communicating or associating with certain people
- owning or using certain articles
- carrying out certain activities, including work
- accessing certain forms of technology, including the internet.

A control order can require a person to:

- remain in premises between certain times of each day
- wear a tracking device
- report to someone at a certain time and place
- allow themselves to be photographed.

A control order does not come into effect until the person subject to it is notified and must not last longer than 12 months.

A person can apply for a control order to be varied, revoked or declared void as soon as the person is notified that an order is confirmed.

In deciding whether to issue a control order, a court must consider the impact of each of the control order requirements upon the person's circumstances, including their financial and personal circumstances.

A person subject to a control order and his or her lawyer are able to obtain a copy of the order which contains a summary of the grounds for the order.

A control order cannot apply to children under 16 years of age. For people aged at least 16 years but under 18 years, a control order can only apply for a maximum of three months. For people aged 18 years or over, a control order can last for up to 12 months.

General information on  
national security can be found at  
**[www.nationalsecurity.gov.au](http://www.nationalsecurity.gov.au)**