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Charter of the United Nations Amendment Bill 2002

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 70 2002-03

Charter of the United Nations Amendment Bill 2002

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Charter of the United Nations Amendment Bill 2002

Date Introduced: 14 November 2002

House: House of Representatives

Portfolio: Foreign Affairs

Commencement: Formal provisions on Royal Assent and the effective provisions immediately after the commencement of Part 4 of the *Charter of the United Nations Act 1945* (which will either be on 6 January 2003 or when regulations are made under section 22A of that Act).

Purpose

To amend the *Charter of the United Nations Act 1945* so that new provisions dealing with terrorism and finances will cover the 'holder', as well as the 'owner' of assets that are regulated under the new provisions, and to ensure that a Minister issuing a notice allowing dealings with a frozen asset may do so either on an application by a relevant person/body or on his/her own initiative.

Background

This Bill seeks to amend the *Charter of the United Nations Act 1945*, as amended by the *Suppression of the Financing of Terrorism Act 2002*¹. The Bills Digest which was prepared for the primary amending Act (i.e. the *Suppression of the Financing of Terrorism Act 2002*) provides the relevant background for this Bill, which does not alter the policy approach of that Bill (now an Act).

In brief that legislation was aimed at restricting the financial resources that are available to support the activities of terrorist organisations. It explicitly made the financing of terrorism a criminal offence and substantially increased the penalties that apply where a person deals with suspected terrorist assets that have been frozen. The legislation also enhanced the collection and use of financial intelligence by requiring cash dealers to report suspected terrorist financing transactions to the Australian Transaction Reports and Analysis Centre and relaxed restrictions on the sharing of information regarding such transactions with the relevant foreign authorities.

Warning:

This Digest was prepared for debate. It reflects the legislation as introduced and does not canvass subsequent amendments.

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These measures addressed commitments Australia had made, or will assume, under United Nations Security Council Resolution 1373² and the International Convention for the Suppression of the Financing of Terrorism.³

The primary amending legislation was part of a package of counter-terrorism legislation introduced by the Howard Government on 12 March 2002. The other legislation in the package was the *Security Legislation Amendment (Terrorism) Bill 2002 [No.2]*, the *Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002*, and the *Border Security Legislation Amendment Bill 2002*. There were also other components of the anti-terrorism package which can be read about further in the relevant Bills Digest, No. 127, 2001-02 *Suppression of the Financing of Terrorism Bill 2002*.

The Department of Foreign Affairs and Trade have a web-site which provides further information on the International Coalition against Terrorism and in particular, Australia's implementation of United Nations Security Council Resolution 1373 (2001). The site is at <http://www.dfat.gov.au/icat/>

Main Provisions

The primary legislation creates offences of dealing with freezable assets and of giving an asset to a proscribed person or entity. A proscribed person or entity is one the Minister (currently the Minister for Foreign Affairs) is satisfied is a terrorist entity. There can, however, be authorised dealings with such assets. This Bill seeks to ensure that not only the owners of assets, but also the holders of assets can apply to the Minister for permission to use or deal with the asset in particular ways. Three of the amendments (**items 1, 2 and 4**) simply add to the pre-existing regulation of someone who is the 'owner' of an asset, by inserting the term 'holder' as well. The final amendment ensures that the Minister can issue notices permitting such dealings either on their own initiative or on an application made by an owner or holder of an asset.

Concluding Comments

Given the passage of the *Suppression of the Financing of Terrorism Bill 2002* this subsequent amendment is not in itself particularly significant – it simply consolidates the pre-existing approach. However the questions which were raised by that original Bill remain, and the wisdom of an approach which relies so comprehensively on administrative fiat, without any recourse to judicial (or other) review, is yet to be seen. The legislative schema provides almost no guidelines regarding the appropriate criteria to be used by the Minister in the exercise of his or her prerogative, while the consequences for those caught within the legislative framework are potentially significant.

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For the ease of the reader the original questions regarding the legislation posed in the previous Bills Digest are reproduced here:

The [legislation] provides a mechanism for freezing terrorist assets once they have been identified. The effectiveness of the [legislation], however, will depend upon whether intelligence and law enforcement agencies are able to identify the right people and entities.

It would appear that to date very few terrorist assets with Australian institutions have been frozen as a result of the measures taken by the Government since September 11.⁴ This outcome may be surprising in view of claims of fundraising activity by terrorist organisations in Australia and gives rise to a number of questions. For example, is it really likely that there are no terrorist assets in Australia? Are institutions adequately complying with instructions to block accounts? Is excessive reliance being placed on lists compiled by the UN or the US government rather than seeking out Australian operatives? What measures are being taken against alternative remittance systems operating in Australia?

If, as is probable, the list of suspect persons and entities presently being used by the authorities are incomplete, what measures can be taken to complete those lists? For example do we need legislation to identify the beneficial owners of interests in trusts or partnerships?⁵

It is possible that more resources will need to be allocated to investigative agencies to ensure that the mechanisms for restricting the flow of funds to terrorist organisations contained in this Bill are deployed to full effect.

Endnotes

- 1 <http://scaleplus.law.gov.au/html/pasteact/3/3496/top.htm>
- 2 The full text of UN Security Council Resolution 1373 is available at the following link: <http://www.un.org/Docs/scres/2001/res1373e.pdf>.
- 3 The text of the convention is available at <http://www.un.org/law/cod/finterr.htm>
- 4 For an account of an exercise of powers under the legislation see 'Terror' group's assets frozen', *The Australian*, Wed 18 Sept. 2002.
- 5 There is no requirement for trusts and partnerships to be registered with a public authority under as companies are obliged to do under the Corporations Act 2001. The magnitude of the problem of identifying beneficiaries of trusts for taxation purposes was highlighted by the Australian National Audit Office (ANAO) in its report, *Managing Tax File Numbers*, April 1999. It states that 45 percent of the 430,572 trust tax returns for 1997 did not include the tax file numbers (TFNs) of the beneficiaries of trust distributions. Further, TFNs were not provided for 370,764 beneficiaries of trusts in 1997. See N. Hancock (ed), 'Terrorism and the Law in Australia: Legislation, Commentary and Constraints', *Research Paper No.12* 2001-02, p. 33/34.

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