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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Anti-terrorism Bill 2004

No. , 2004

(Attorney-General)

**A Bill for an Act to amend the law relating to
foreign incursions and recruitment, terrorism
offences and proceeds of crime, and for related
purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **foreign incursions and recruitment, terrorism**
3 **offences and proceeds of crime, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Anti-terrorism Act 2004*.

8 **2 Commencement**

9 This Act commences on the day after the day on which it receives
10 the Royal Assent.

1 **3 Schedule(s)**

2 Each Act that is specified in a Schedule to this Act is amended or
3 repealed as set out in the applicable items in the Schedule
4 concerned, and any other item in a Schedule to this Act has effect
5 according to its terms.

6 **4 Application of amendments**

- 7 (1) The amendments of the *Proceeds of Crime Act 2002* apply to any
8 application made under that Act after the commencement of this
9 Act, including an application in relation to:
- 10 (a) conduct that occurred before the commencement of this Act;
 - 11 or
 - 12 (b) proceeds derived or realised before the commencement of
13 this Act; or
 - 14 (c) literary proceeds derived or transferred to Australia before
15 the commencement of this Act.
- 16 (2) The amendment made by item 17 of Schedule 1 does not apply to
17 proceedings for offences alleged to have been committed before
18 the commencement of this Act.

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Schedule 1—Amendments

Crimes Act 1914

1 Subsection 23B(1) (definition of *investigation period*)

Repeal the definition, substitute:

investigation period means the investigation period prescribed by section 23C or 23CA, as the case requires.

2 Subsection 23B(1)

Insert:

terrorism offence means:
(a) an offence against Division 72 of the Criminal Code; or
(b) an offence against Part 5.3 of the Criminal Code.

3 Subsection 23C(1)

After “Commonwealth offence”, insert “(other than a terrorism offence)”.

Note: The heading to section 23C is replaced by the heading “**Period of arrest if arrested for non-terrorism offence**”.

4 Subsection 23C(6)

Repeal the subsection, substitute:

(6) If the person has been arrested more than once within any period of 48 hours, the investigation period for each arrest other than the first is reduced by so much of any of the following periods as occurred within that 48 hours:
(a) any earlier investigation period or periods under this section;
(b) any earlier investigation period or periods under section 23CA.

5 After section 23C

Insert:

1 **23CA Period of arrest if arrested for terrorism offence**

2 (1) If a person is arrested for a terrorism offence, the following
3 provisions apply.

4 (2) The person may be detained for the purpose of investigating either
5 or both of the following:

- 6 (a) whether the person committed the offence;
- 7 (b) whether the person committed another terrorism offence that
8 an investigating official reasonably suspects the person to
9 have committed;

10 but must not be detained for that purpose, or for purposes that
11 include that purpose, after the end of the investigation period
12 prescribed by this section.

13 (3) The person must be:

- 14 (a) released (whether unconditionally or on bail) within the
15 investigation period; or
- 16 (b) brought before a judicial officer within that period or, if it is
17 not practicable to do so within that period, as soon as
18 practicable after the end of that period.

19 Note: For *judicial officer*, see subsection (10).

20 (4) For the purposes of this section, but subject to subsections (6) and
21 (8), the investigation period begins when the person is arrested, and
22 ends at a time thereafter that is reasonable, having regard to all the
23 circumstances, but does not extend beyond:

- 24 (a) if the person is or appears to be under 18, an Aboriginal
25 person or a Torres Strait Islander—2 hours; or
- 26 (b) in any other case—4 hours;

27 after the arrest, unless the period is extended under section 23DA.

28 (5) In ascertaining any period of time for the purposes of this section,
29 regard shall be had to the number and complexity of matters being
30 investigated.

31 (6) If the person has been arrested more than once within any period of
32 48 hours, the investigation period for each arrest other than the first
33 is reduced by so much of any of the following periods as occurred
34 within that 48 hours:

- 35 (a) any earlier investigation period or periods under this section;
 - 36 (b) any earlier investigation period or periods under section 23C.
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- 1 (7) However, in relation to each first arrest, disregard subsection (6)
2 for any later arrest if:
- 3 (a) the later arrest is for a Commonwealth offence:
- 4 (i) that was committed after the end of the person's period
5 of detention under this Part for the first arrest; or
- 6 (ii) that arose in different circumstances to those in which
7 any Commonwealth offence to which the first arrest
8 relates arose, and for which new evidence has been
9 found since the first arrest; and
- 10 (b) the person's questioning associated with the later arrest does
11 not relate to:
- 12 (i) a Commonwealth offence to which the first arrest
13 relates; or
- 14 (ii) the circumstances in which such an offence was
15 committed.
- 16 (8) In ascertaining any period of time for the purposes of
17 subsection (4) or (6), the following times are to be disregarded:
- 18 (a) the time (if any) that is reasonably required to convey the
19 person from the place at which the person is arrested to the
20 nearest premises at which the investigating official has access
21 to facilities for complying with this Part;
- 22 (b) any time during which the questioning of the person is
23 suspended or delayed to allow the person, or someone else on
24 the person's behalf, to communicate with a legal practitioner,
25 friend, relative, parent, guardian, interpreter or other person
26 as provided by this Part;
- 27 (c) any time during which the questioning of the person is
28 suspended or delayed to allow such a legal practitioner,
29 friend, relative, parent, guardian, interpreter or other person
30 to arrive at the place where the questioning is to take place;
- 31 (d) any time during which the questioning of the person is
32 suspended or delayed to allow the person to receive medical
33 attention;
- 34 (e) any time during which the questioning of the person is
35 suspended or delayed because of the person's intoxication;
- 36 (f) any time during which the questioning of the person is
37 suspended or delayed to allow for an identification parade to
38 be arranged and conducted;
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- 1 (g) any time during which the questioning of the person is
2 suspended or delayed in order to allow the making of an
3 application under section 3ZQB or the carrying out of a
4 prescribed procedure within the meaning of Division 4A of
5 Part IAA;
- 6 (h) the time (if any) that is reasonably required in connection
7 with making and disposing of an application under
8 section 23DA, 23WU or 23XB;
- 9 (i) any time during which the constable is informing the person
10 of matters specified in section 23WJ;
- 11 (j) any reasonable time during which the questioning of the
12 person is suspended or delayed to allow the person to rest or
13 recuperate;
- 14 (k) any time during which a forensic procedure is being carried
15 out on the person by order of a magistrate under Division 5
16 of Part ID;
- 17 (l) any time during which the questioning of the person is
18 suspended or delayed, if section 23XGD applies and that
19 time is to be disregarded in working out a period of time for
20 the purposes of that section;
- 21 (m) any reasonable period during which the questioning of the
22 person is reasonably suspended or delayed in order to allow
23 the investigating official to obtain information relevant to the
24 investigation from a place outside Australia that is in a
25 different time zone, being a period that does not exceed the
26 amount of the time zone difference.
- 27 (9) In any proceedings, the burden lies on the prosecution to prove
28 that:
- 29 (a) the person was brought before a judicial officer as soon as
30 practicable; or
- 31 (b) any particular time was covered by a provision of
32 subsection (8).
- 33 (10) In this section:
- 34 *judicial officer* means any of the following:
- 35 (a) a magistrate;
- 36 (b) a justice of the peace;
- 37 (c) a person authorised to grant bail under the law of the State or
38 Territory in which the person was arrested.
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6 Subsection 23D(1)

After “serious offence”, insert “(other than a terrorism offence)”.

Note: The heading to section 23D is replaced by the heading “**Extension of investigation period if arrested for non-terrorism offence**”.

7 After section 23D

Insert:

23DA Extension of investigation period if arrested for terrorism offence

- (1) If a person is under arrest for a terrorism offence, an investigating official may, at or before the end of the investigation period, apply for an extension of the investigation period.
- (2) The application must be made to:
 - (a) a magistrate; or
 - (b) if it cannot be made at a time when a magistrate is available—a justice of the peace employed in a court of a State or Territory or a bail justice; or
 - (c) if it cannot be made when any of the foregoing is available—any justice of the peace.The magistrate, justice of the peace or bail justice to whom the application is made is the *judicial officer* for the purposes of this section and section 23E.
- (3) The application may be made before the judicial officer, or in writing, or as prescribed by section 23E, and the person or his or her legal representative may make representations to the judicial officer about the application.
- (4) Subject to subsection (7), the judicial officer may extend the investigation period, by signed written authority, if satisfied that:
 - (a) the offence is a terrorism offence; and
 - (b) further detention of the person is necessary to preserve or obtain evidence or to complete the investigation into the offence or into another terrorism offence; and
 - (c) the investigation into the offence is being conducted properly and without delay; and

- 1 (d) the person, or his or her legal representative, has been given
2 the opportunity to make representations about the
3 application.
- 4 (5) The authority must set out:
5 (a) the day and time when the extension was granted; and
6 (b) the reasons for granting the extension; and
7 (c) the terms of the extension.
- 8 (6) The judicial officer must give the investigating official a copy of
9 the authority as soon as practicable after signing the authority.
- 10 (7) The investigation period may be extended any number of times,
11 but the total of the periods of extension cannot be more than 20
12 hours.

13 **8 Subsection 23E(1)**

14 After “23D”, insert “or 23DA”.

15 **9 At the end of subsection 23E(3)**

16 Add “or 23DA(5) (as the case requires)”.

17 **10 Subsection 23WD(4) (note)**

18 Omit “(see subsection 23C(7))”.

19 **11 Subsection 23WM(4) (note)**

20 Omit “(see subsection 23C(7))”.

21 **12 Paragraph 23XGD(2)(h)**

22 Repeal the paragraph, substitute:

- 23 (h) any time that is to be disregarded under subsection 23C(7) or
24 23CA(8).

25 ***Crimes (Foreign Incursions and Recruitment) Act 1978***

26 **13 Subsection 6(1) (penalty)**

27 Omit “14 years”, substitute “20 years”.

28 **14 Paragraph 6(2)(b)**

1 Omit “during the period of one year immediately preceding”, substitute
2 “before”.

3 **15 At the end of section 6**

4 Add:

5 (5) Paragraph (4)(a) does not apply if:

6 (a) a person enters a foreign State with intent to engage in a
7 hostile activity in that foreign State while in or with an
8 organisation; and

9 (b) the organisation is a prescribed organisation at the time of
10 entry.

11 (6) Paragraph (4)(a) does not apply if:

12 (a) a person engages in a hostile activity in a foreign State while
13 in or with an organisation; and

14 (b) the organisation is a prescribed organisation at the time when
15 the person engages in that hostile activity.

16 (7) For the purposes of subsections (5) and (6), *prescribed*
17 *organisation* means:

18 (a) an organisation that is prescribed by the regulations for the
19 purposes of this paragraph; or

20 (b) an organisation referred to in paragraph (b) of the definition
21 of *terrorist organisation* in subsection 102.1(1) of the
22 *Criminal Code*.

23 **16 Paragraph 7(2)(b)**

24 Omit “during the period of one year immediately preceding”, substitute
25 “before”.

26 **17 After subsection 11(3)**

27 Insert:

28 (3A) In a proceeding against a person for an offence against this Act, a
29 certificate by a Minister, stating that an organisation specified in
30 the certificate was not, on a specified day or during a specified
31 period, an armed force, or part of an armed force, of the
32 government of a foreign State specified in the certificate is prima
33 facie evidence of the matters stated in the certificate.

1 **18 At the end of the Act**

2 Add:

3 **12 Regulations**

4 The Governor-General may make regulations prescribing matters:

- 5 (a) required or permitted by this Act to be prescribed; or
6 (b) necessary or convenient to be prescribed for carrying out or
7 giving effect to this Act.

8 ***Criminal Code Act 1995***

9 **19 Paragraph 102.3(1)(b) of the *Criminal Code***

10 Repeal the paragraph, substitute:

- 11 (b) the organisation is a terrorist organisation; and

12 **20 Section 102.5 of the *Criminal Code***

13 Repeal the section, substitute:

14 **102.5 Training a terrorist organisation or receiving training from a**
15 **terrorist organisation**

- 16 (1) A person commits an offence if:
17 (a) the person intentionally provides training to, or intentionally
18 receives training from, an organisation; and
19 (b) the organisation is a terrorist organisation; and
20 (c) the person is reckless as to whether the organisation is a
21 terrorist organisation.

22 Penalty: Imprisonment for 25 years.

- 23 (2) A person commits an offence if:
24 (a) the person intentionally provides training to, or intentionally
25 receives training from, an organisation; and
26 (b) the organisation is a terrorist organisation that is covered by
27 paragraph (b), (c), (d) or (e) of the definition of ***terrorist***
28 ***organisation*** in subsection 102.1(1).

29 Penalty: Imprisonment for 25 years.

- 30 (3) Subject to subsection (4), strict liability applies to paragraph (2)(b).
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1 (4) Subsection (2) does not apply unless the person is reckless as to the
2 circumstance mentioned in paragraph (2)(b).

3 Note: A defendant bears an evidential burden in relation to the matter in
4 subsection (4) (see subsection 13.3(3)).

5 ***Proceeds of Crime Act 2002***

6 **21 Paragraph 20(1)(d)**

7 Repeal the paragraph, substitute:

8 (d) there are reasonable grounds to suspect that a person has
9 committed an *indictable offence or a *foreign indictable
10 offence, and that the person has derived *literary proceeds in
11 relation to the offence; and

12 **22 Paragraphs 20(3)(b) and (c)**

13 Repeal the paragraphs, substitute:

14 (c) that the authorised officer suspects that the suspect derived
15 *literary proceeds in relation to the offence; and

16 **23 Paragraph 152(2)(c)**

17 Omit “in *Australia”.

18 **24 Paragraph 153(1)(a)**

19 After “resulting”, insert “, directly or indirectly,”.

20 **25 After subsection 153(3)**

21 Insert:

22 (3A) If the offence is a *foreign indictable offence, then a *benefit is not
23 treated as *literary proceeds unless the benefit is derived in
24 *Australia or transferred to Australia.

25 **26 After section 337**

26 Insert:

27 **337A Meaning of *foreign indictable offence***

28 (1) If:

29 (a) an application (the ***current application***) is made for a
30 *restraining order or *confiscation order in relation to conduct

1 that constituted an offence against a law of a foreign country;
2 and

3 (b) if the conduct had occurred in Australia at the testing time
4 referred to in subsection (2), the conduct would have
5 constituted an offence against a law of the Commonwealth, a
6 State or a Territory punishable by at least 12 months
7 imprisonment;

8 then, for the purposes of the current application, the conduct is
9 treated as having constituted a *foreign indictable offence* at all
10 relevant times.

11 Example: X commits an offence against a law of a foreign country at a time
12 when the conduct is not an offence against Australian law. X then
13 derives literary proceeds in relation to the offence and transfers the
14 proceeds to Australia. After the proceeds are transferred, a new
15 Commonwealth offence is created that applies to the type of conduct
16 concerned. An application is then made for a literary proceeds order.
17 For the purposes of the proceedings for that order, the original
18 conduct is treated as having constituted a foreign indictable offence at
19 all relevant times and accordingly an order can be made in respect of
20 those proceeds.

21 (2) The *testing time* for the current application is:

- 22 (a) if the current application is an application for a *restraining
23 order—the time when the current application was made; or
24 (b) if the current application is an application for a *confiscation
25 order (other than a *literary proceeds order) in relation to a
26 restraining order—the time when the application for the
27 restraining order was made; or
28 (c) if:
29 (i) the current application is an application for a literary
30 proceeds order; and
31 (ii) an earlier restraining order has been made in respect of
32 the same offence;
33 the time when the application was made for that earlier
34 restraining order; or
35 (d) if the current application is an application for a literary
36 proceeds order but paragraph (c) does not apply—the time
37 when the current application was made.

38 (3) In this section:

39 *offence against a law of a foreign country* includes an offence
40 triable by a military commission of the United States of America

1 established under a Military Order of 13 November 2001 made by
2 the President of the United States of America and entitled
3 “Detention, Treatment, and Trial of Certain Non-Citizens in the
4 War Against Terrorism”.

5 **27 Section 338 (definition of *foreign indictable offence*)**

6 Repeal the definition, substitute:

7 *foreign indictable offence* has the meaning given by section 337A.