



Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002

No. 58, 2002

**An Act to create offences relating to international
terrorist activities using explosive or lethal devices,
and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to create offences relating to international terrorist activities using explosive or lethal devices, and for related purposes

[Assented to 3 July 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	3 July 2002
2. Schedule 1	A single day to be fixed by Proclamation, subject to subsections (3) and (4)	8 September 2002 (<i>Gazette</i> 2002, No. S331)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.
- (3) A Proclamation under item 2 of the table must not specify a day that occurs before the day on which the International Convention for the Suppression of Terrorist Bombings (the *Convention*) enters into force for Australia.
- Note: The Convention was done at New York on 15 December 1997.
- (4) If a provision covered by item 2 of the table does not commence within the period of 6 months beginning on the day on which the Convention enters into force for Australia, it commences on the first day after the end of that period.
- (5) If a provision commences as a result of subsection (4), the Minister must announce by notice in the *Gazette* the day on which the provision commenced.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Criminal Code Act 1995

1 The Schedule (at the end of Chapter 4 of the *Criminal Code*)

Add:

Division 72—International terrorist activities using explosive or lethal devices

72.1 Purpose

The purpose of this Division is to create offences relating to international terrorist activities using explosive or lethal devices and give effect to the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997.

Note: The text of the Convention is available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

72.2 ADF members not liable for prosecution

Nothing in this Division makes a member of the Australian Defence Force acting in connection with the defence or security of Australia liable to be prosecuted for an offence.

72.3 Offences

- (1) A person commits an offence if:
 - (a) the person intentionally delivers, places, discharges or detonates a device; and
 - (b) the device is an explosive or other lethal device and the person is reckless as to that fact; and
 - (c) the device is delivered, placed, discharged, or detonated, to, in, into or against:
 - (i) a place of public use; or
 - (ii) a government facility; or
 - (iii) a public transportation system; or

- (iv) an infrastructure facility; and
- (d) the person intends to cause death or serious harm.

Penalty: Imprisonment for life.

- (2) A person commits an offence if:
 - (a) the person intentionally delivers, places, discharges or detonates a device; and
 - (b) the device is an explosive or other lethal device and the person is reckless as to that fact; and
 - (c) the device is delivered, placed, discharged, or detonated, to, in, into or against:
 - (i) a place of public use; or
 - (ii) a government facility; or
 - (iii) a public transportation system; or
 - (iv) an infrastructure facility; and
 - (d) the person intends to cause extensive destruction to the place, facility or system; and
 - (e) the person is reckless as to whether that intended destruction results or is likely to result in major economic loss.

Penalty: Imprisonment for life.

- (3) Strict liability applies to paragraphs (1)(c) and (2)(c).

72.4 Jurisdictional requirement

- (1) A person commits an offence under this Division only if one or more of the following paragraphs applies and the circumstances relating to the alleged offence are not exclusively internal (see subsection (2)):
 - (a) the conduct constituting the alleged offence occurs:
 - (i) wholly or partly in Australia; or
 - (ii) wholly or partly on board an Australian ship or an Australian aircraft;
 - (b) at the time of the alleged offence, the person is an Australian citizen;
 - (c) at the time of the alleged offence, the person is a stateless person whose habitual residence is in Australia;
 - (d) the conduct is subject to the jurisdiction of another State Party to the Convention established in accordance with

- paragraph 1 or 2 of Article 6 of the Convention and the person is in Australia;
- (e) the alleged offence is committed against a government facility of the Commonwealth, or of a State or Territory, that is located outside Australia;
 - (f) the alleged offence is committed against:
 - (i) an Australian citizen; or
 - (ii) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory;
 - (g) by engaging in the conduct constituting the alleged offence, the person intends to compel a legislative, executive or judicial institution of the Commonwealth, a State or a Territory to do or omit to do an act.
- (2) The circumstances relating to the alleged offence are exclusively internal if:
- (a) the conduct constituting the alleged offence occurs wholly within Australia; and
 - (b) the alleged offender is an Australian citizen; and
 - (c) all of the persons against whom the offence is committed are Australian citizens or bodies corporate incorporated by or under a law of the Commonwealth or of a State or Territory; and
 - (d) the alleged offender is in Australia; and
 - (e) no other State Party to the Convention has a basis under paragraph 1 or 2 of Article 6 of the Convention for exercising jurisdiction in relation to the conduct.

72.5 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or of a State or Territory.

72.6 Double jeopardy and foreign offences

If a person has been convicted or acquitted of an offence in respect of conduct under the law of a foreign country, the person cannot be convicted of an offence under this Division in respect of that conduct.

72.7 Bringing proceedings under this Division

- (1) Proceedings for an offence under this Division must not be commenced without the Attorney-General's written consent.
- (2) However, a person may be arrested, charged, remanded in custody, or released on bail, in connection with an offence under this Division before the necessary consent has been given.
- (3) In determining whether to bring proceedings for an offence under this Division, the Attorney-General must have regard to the terms of the Convention, including paragraph 2 of Article 19.
- (4) In determining whether to bring proceedings for an offence under this Division, the Attorney-General must also have regard to:
 - (a) whether the conduct constituting the offence also gives rise to an offence under a law of a State or Territory; and
 - (b) whether a prosecution relating to the conduct under the State or Territory law has been or will be commenced.

72.8 Ministerial certificates relating to proceedings

- (1) The Minister administering the *Charter of the United Nations Act 1945* may issue a certificate stating any of the following matters:
 - (a) that the Convention entered into force for Australia on a specified day;
 - (b) that the Convention remains in force for Australia or any other State Party on a specified day;
 - (c) a matter relevant to the establishment of jurisdiction by a State Party under paragraph 1 or 2 of Article 6 of the Convention.
- (2) The Minister administering the *Australian Citizenship Act 1948* may issue a certificate stating that:
 - (a) a person is or was an Australian citizen at a particular time;
or
 - (b) a person is or was a stateless person whose habitual residence is or was in Australia at a particular time.
- (3) In any proceedings, a certificate under this section is prima facie evidence of the matters in the certificate.

72.9 Jurisdiction of State courts preserved

For the purposes of section 38 of the *Judiciary Act 1903*, a matter arising under this Division, including a question of interpretation of the Convention, is taken not to be a matter arising directly under a treaty.

72.10 Definitions

In this Division:

Convention means the Convention referred to in section 72.1.

explosive or other lethal device has the same meaning as in the Convention.

government facility has the same meaning as *State or government facility* has in the Convention.

infrastructure facility has the same meaning as in the Convention.

place of public use has the same meaning as in the Convention.

public transportation system has the same meaning as in the Convention.

Extradition Act 1988

2 Section 5 (at the end of paragraph (a) of the definition of *political offence*)

Add:

; or (ix) Article 2 of the International Convention for the Suppression of Terrorist Bombings, done at New York on 15 December 1997;

*[Minister's second reading speech made in—
House of Representatives on 12 March 2002
Senate on 14 March 2002]*

(48/02)