



Anti-terrorism Act (No. 2) 2004

No. 124, 2004

An Act relating to associating with terrorist organisations, the transfer of prisoners, and for other 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 relating to associating with terrorist organisations, the transfer of prisoners, and for other purposes

[Assented to 16 August 2004]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Anti-terrorism Act (No. 2) 2004*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

column 2 of the table. Any other statement in column 2 has effect according to its terms.

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.	16 August 2004
4. Schedule 3	The day after this Act receives the Royal Assent.	17 August 2004
5. Schedule 4	The day on which this Act receives the Royal Assent.	16 August 2004

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 contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Crimes Act 1914

1A Paragraph 15AA(2)(a)

After “terrorism offence”, insert “(other than an offence against section 102.8 of the *Criminal Code*)”.

Criminal Code Act 1995

1 Subsection 102.1(1) of the *Criminal Code*

Insert:

associate: a person associates with another person if the person meets or communicates with the other person.

2 Subsection 102.1(1) of the *Criminal Code*

Insert:

close family member of a person means:

- (a) the person’s spouse, de facto spouse or same-sex partner; or
- (b) a parent, step-parent or grandparent of the person; or
- (c) a child, step-child or grandchild of the person; or
- (d) a brother, sister, step-brother or step-sister of the person; or
- (e) a guardian or carer of the person.

3 At the end of Subdivision B of Division 102 of the *Criminal Code*

Add:

102.8 Associating with terrorist organisations

- (1) A person commits an offence if:
 - (a) on 2 or more occasions:

- (i) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
 - (ii) the person knows that the organisation is a terrorist organisation; and
 - (iii) the association provides support to the organisation; and
 - (iv) the person intends that the support assist the organisation to expand or to continue to exist; and
 - (v) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
- (b) the organisation is a terrorist organisation because of paragraph (b), (c), (d) or (e) of the definition of **terrorist organisation** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

- (2) A person commits an offence if:
- (a) the person has previously been convicted of an offence against subsection (1); and
 - (b) the person intentionally associates with another person who is a member of, or a person who promotes or directs the activities of, an organisation; and
 - (c) the person knows that the organisation is a terrorist organisation; and
 - (d) the association provides support to the organisation; and
 - (e) the person intends that the support assist the organisation to expand or to continue to exist; and
 - (f) the person knows that the other person is a member of, or a person who promotes or directs the activities of, the organisation; and
 - (g) the organisation is a terrorist organisation because of paragraph (b), (c), (d) or (e) of the definition of **terrorist organisation** in this Division (whether or not the organisation is a terrorist organisation because of paragraph (a) of that definition also).

Penalty: Imprisonment for 3 years.

- (3) Strict liability applies to paragraphs (1)(b) and (2)(g).
- (4) This section does not apply if:
- (a) the association is with a close family member and relates only to a matter that could reasonably be regarded (taking into account the person’s cultural background) as a matter of family or domestic concern; or
 - (b) the association is in a place being used for public religious worship and takes place in the course of practising a religion; or
 - (c) the association is only for the purpose of providing aid of a humanitarian nature; or
 - (d) the association is only for the purpose of providing legal advice or legal representation in connection with:
 - (i) criminal proceedings or proceedings related to criminal proceedings (including possible criminal proceedings in the future); or
 - (ii) proceedings relating to whether the organisation in question is a terrorist organisation; or
 - (iii) a decision made or proposed to be made under Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*, or proceedings relating to such a decision or proposed decision; or
 - (iv) a listing or proposed listing under section 15 of the *Charter of the United Nations Act 1945* or an application or proposed application to revoke such a listing, or proceedings relating to such a listing or application or proposed listing or application; or
 - (v) proceedings conducted by a military commission of the United States of America established under a Military Order of 13 November 2001 made by the President of the United States of America and entitled “Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism”; or
 - (vi) proceedings for a review of a decision relating to a passport or other travel document or to a failure to issue such a passport or other travel document (including a passport or other travel document that was, or would have been, issued by or on behalf of the government of a foreign country).
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Note: A defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3).

- (5) This section does not apply unless the person is reckless as to the circumstance mentioned in paragraph (1)(b) and (2)(g) (as the case requires).

Note: A defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3).

- (6) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3).

- (7) A person who is convicted of an offence under subsection (1) in relation to the person's conduct on 2 or more occasions is not liable to be punished for an offence under subsection (1) for other conduct of the person that takes place:

- (a) at the same time as that conduct; or
- (b) within 7 days before or after any of those occasions.

Schedule 4—Transfer of prisoners

Administrative Decisions (Judicial Review) Act 1977

1 After paragraph (xa) of Schedule 1

Insert:

- (xb) decisions of the Attorney-General under Part II or III of the *Transfer of Prisoners Act 1983* refusing applications or requests, or refusing to give consent, on the ground that, or on grounds that include the ground that, refusal is necessary in the interests of security (within the meaning of that Act);
- (xc) decisions of the Attorney-General under Part IV of the *Transfer of Prisoners Act 1983*;

Transfer of Prisoners Act 1983

2 Subsection 3(1) (definition of *prison*)

Repeal the definition, substitute:

prison includes:

- (a) any place where a person who has been sentenced to imprisonment may be detained to undergo that imprisonment; and
- (b) any place where a person who has been charged with an offence may be remanded in custody for that offence.

3 Subsection 3(1)

Insert:

remand prisoner means a person who has been charged with an offence against a law of the Commonwealth and who has been remanded in custody for that offence.

4 Subsection 3(1) (definition of *return transfer order*)

Omit “or 16A”, substitute “, 16A or 16C”.

5 Subsection 3(1)

Insert:

security means:

- (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:
 - (i) espionage; or
 - (ii) sabotage; or
 - (iii) politically motivated violence; or
 - (iv) promotion of communal violence; or
 - (v) attacks on Australia's defence system; or
 - (vi) acts of foreign interference; orwhether directed from, or committed within, Australia or not; and
- (b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a).

6 Subsection 3(1)

Insert:

security transfer order means an order for the transfer of a prisoner made under section 16B.

7 Subsection 3(1) (before paragraph (a) of the definition of *transfer order*)

Insert:

- (aa) a security transfer order; or

8 Subsection 3(1) (at the end of paragraph (a) of the definition of *transfer order*)

Add "or".

9 Subsection 3(1) (at the end of the definition of *transfer order*)

Add:

- ; or (d) an order under section 16D or 16E.

10 Subsection 3(10)

After “transfer order”, insert “(other than an order under Part IV)”.

11 Part III (after the heading)

Insert:

Division 1—Trial transfer order

12 Part IV (heading)

Repeal the heading.

13 Before section 14

Insert:

Division 2—Return of prisoner

14 After subsection 16(1)

Insert:

- (1A) However, subsection (1) does not apply if the transfer order in pursuance of which the person is in that other State or Territory is an order under Part IV.

15 Before Part V

Insert:

Part IV—Transfer for purpose of security

16B Transfer of prisoner on security grounds

- (1) The Attorney-General may make an order in writing for the transfer of:
- (a) a prisoner serving a federal sentence of imprisonment in a prison of a State or Territory; or
 - (b) a remand prisoner in a prison of a State or Territory; to another State or Territory if the Attorney-General believes on reasonable grounds that it is necessary in the interests of security.

- (2) In exercising his or her powers under subsection (1) to make an order, the Attorney-General must have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
 - (a) the administration of justice; and
 - (b) the welfare of the prisoner or remand prisoner.
- (3) The Attorney-General must not make an order under subsection (1) for the transfer of the prisoner or remand prisoner unless both:
 - (a) the appropriate Minister of the State or Territory in which the prisoner or remand prisoner is in prison; and
 - (b) the appropriate Minister of the State or Territory to which the prisoner or remand prisoner is to be transferred;have consented in writing to the transfer.

16C Return of prisoner

- (1) If:
 - (a) a prisoner or remand prisoner is transferred to a State or Territory pursuant to:
 - (i) a security transfer order; or
 - (ii) a return transfer order under this section (unless it orders a transfer to the originating State or Territory);and
 - (b) the Attorney-General reviews the order; and
 - (c) as a result of the review, the Attorney-General believes on reasonable grounds that, if he or she were now to consider the transfer of the prisoner or remand prisoner to the State or Territory, the order would not be made;the Attorney-General may make an order in writing for the transfer of the prisoner or remand prisoner from that State or Territory back to:
 - (d) the State or Territory from which he or she has been transferred pursuant to that order; or
 - (e) if that State or Territory is not the originating State or Territory:
 - (i) the originating State or Territory; or
 - (ii) any other State or Territory to which the prisoner or remand prisoner has been transferred, pursuant either to

a security transfer order or to a return transfer order under this section, since his or her transfer from the originating State or Territory.

- (2) The Attorney-General must conduct a review of an order referred to in paragraph (1)(a), within 3 months after:
- (a) the day on which the Attorney-General made the order; and
 - (b) the day on which the Attorney-General last reviewed the order;
- unless the Attorney-General has made an order under subsection (1) after a review of that order.
- (3) In exercising his or her powers under subsection (1) to make an order, the Attorney-General must have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
- (a) the administration of justice; and
 - (b) the welfare of the prisoner or remand prisoner.
- (4) The Attorney-General must not make an order under subsection (1) for the transfer of the prisoner or remand prisoner unless both:
- (a) the appropriate Minister of the State or Territory in which the prisoner or remand prisoner is in prison; and
 - (b) the appropriate Minister of the State or Territory to which the prisoner or remand prisoner is to be transferred;
- have consented in writing to the transfer.
- (5) In this section:
- originating State or Territory*** means the last State or Territory in which the prisoner or remand prisoner was held other than as a result of an order under this Part.

16D Transfer for court proceedings—general

- (1) If a security transfer order, or a return transfer order under section 16C, has been made in relation to a prisoner or remand prisoner, the Attorney-General may make an order in writing for:
- (a) the transfer of the prisoner or remand prisoner from the State or Territory in which the prisoner or remand prisoner is in

prison to another State or Territory to appear in proceedings before a court in that other State or Territory; and

- (b) the transfer of the prisoner or remand prisoner from the other State or Territory back to the first-mentioned State or Territory as soon as practicable after that appearance has concluded.
- (2) However:
- (a) the Attorney-General must not make an order under subsection (1) if the Attorney-General believes on reasonable grounds that it is contrary to the interests of security; and
 - (b) this section does not apply in relation to the appearance of a remand prisoner in proceedings for the offence with which he or she is charged and for which he or she has been remanded in custody; and
 - (c) this section does not apply once the prisoner or remand prisoner has been returned to the originating State or Territory (within the meaning of section 16C).
- (3) In exercising his or her powers under subsection (1) to make an order, the Attorney-General must have regard to all matters that he or she considers relevant, including, but without limiting the generality of the foregoing:
- (a) the administration of justice; and
 - (b) the welfare of the prisoner or remand prisoner.
- (4) The Attorney-General must not make an order under subsection (1) for the transfers of the prisoner or remand prisoner unless both:
- (a) the appropriate Minister of the State or Territory in which the prisoner or remand prisoner is in prison at the time the order is made; and
 - (b) the appropriate Minister of the State or Territory to which the prisoner or remand prisoner is to be transferred to appear in the proceedings;
- have consented in writing to the transfers.

16E Transfer for trial of remand prisoner

- (1) If:
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- (a) a security transfer order, or a return transfer order under section 16C, has been made in relation to a remand prisoner; and
- (b) the remand prisoner is required to appear in proceedings for the offence with which he or she is charged and for which he or she has been remanded in custody before a court in a State or Territory; and
- (c) the remand prisoner is in prison in another State or Territory; the Attorney-General must make an order in writing for:
 - (d) the transfer of the remand prisoner from the other State or Territory to the State or Territory in which he or she is required to appear; and
 - (e) the transfer of the remand prisoner from the State or Territory in which he or she is required to appear back to the other State or Territory as soon as practicable after that appearance has concluded.

(2) However:

- (a) the Attorney-General is not required to make an order under subsection (1) if:
 - (i) the Attorney-General believes on reasonable grounds that it is essential in the interests of security that the order not be made; and
 - (ii) the court that remanded the remand prisoner in custody orders that his or her detention may continue; and
- (b) this section does not apply once the prisoner or remand prisoner has been returned to the originating State or Territory (within the meaning of section 16C).

16F Transfer under State transfer laws

- (1) If an order under this Part has been made in relation to a prisoner or remand prisoner:
 - (a) an application must not be made to a court for an order under a State transfer law for the transfer of the prisoner or remand prisoner to another State or Territory; and
 - (b) an order (other than an order by a court) must not be made under a State transfer law for the transfer of the prisoner or remand prisoner to another State or Territory;

unless the Attorney-General has consented in writing to the transfer.

- (2) This section does not apply once the prisoner or remand prisoner has been returned to the originating State or Territory (within the meaning of section 16C).

16 Subsection 17(5)

After “a transfer order”, insert “(other than an order under Part IV)”.

17 Subsection 17(6)

After “a transfer order”, insert “(other than an order under Part IV)”.

18 At the end of subsection 29(1)

Add “or the powers under Part IV”.

19 After subsection 29(1)

Insert:

- (1A) However, a delegation under subsection (1) does not extend to the power:
- (a) to make or revoke an order under Part II; or
 - (b) to make an application under section 8; or
 - (c) to give consent for the purposes of subsection 9(2); or
 - (d) to serve notices or make orders under Division 2 of Part III; in any case:
 - (e) that relates to a prisoner or remand prisoner who is subject to an order under Part IV; or
 - (f) in which making or revoking the order, making the application, giving the consent or serving the notice would involve consideration of questions of security.

20 At the end of subsection 29(4)

Add “or the powers under Part IV”.

*[Minister's second reading speech made in—
House of Representatives on 17 June 2004
Senate on 13 August 2004]*

(104/04)