

Passed by both Houses



New South Wales

Stronger Communities Legislation Amendment (Crimes) Bill 2020

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2020



New South Wales

Stronger Communities Legislation Amendment (Crimes) Bill 2020

Act No _____, 2020

An Act to amend various Acts relating to crimes and other matters in the Communities and Justice portfolio.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Stronger Communities Legislation Amendment (Crimes) Act 2020*.

2 Commencement

This Act commences on the date of assent to this Act.

3 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

1.1 Children (Criminal Proceedings) Act 1987 No 55

[1] Section 19 Court may direct imprisonment to be served as a juvenile offender

Omit “Note.” from the note to section 19(1). Insert instead “**Note 1.**”

[2] Section 19(1), note 2

Insert after note 1 (as amended by item [1])—

Note 2. Section 9A of the *Children (Detention Centres) Act 1987* provides that persons who are 18 years of age or older are not to be detained in a detention centre in certain circumstances.

[3] Section 19(7)

Insert “9A or” before “28”.

Explanatory note

Item [2] of the proposed amendments clarifies that persons aged between 18 and 21 years are, as a result of an amendment to the *Children (Detention Centres) Act 1987* made by this Schedule, unable to be detained in a detention centre under that Act in certain circumstances. Items [1] and [3] make consequential amendments.

1.2 Children (Detention Centres) Act 1987 No 57

[1] Section 9A Certain persons not to be detained in detention centres

Omit “he or she” wherever occurring in section 9A(1) and (2).

Insert instead “the person”.

[2] Section 9A(3)–(5)

Omit the note to section 9A. Insert instead—

- (3) A person who is of or above the age of 18 years, but under the age of 21 years, is not to be detained in a detention centre if—
 - (a) the person—
 - (i) is currently in custody in a correctional centre, and
 - (ii) has been in custody in a correctional centre for a period of, or periods totalling, more than 4 weeks, or
 - (b) an order under section 28(1) has previously been made in relation to the person’s current period of custody in a correctional centre.
- (4) Subsection (3) does not apply if the person is a juvenile inmate transferred to a detention centre by order under section 10(1).
- (5) A person who is not to be detained in a detention centre because of subsection (3) is taken to be an inmate under the *Crimes (Administration of Sentences) Act 1999*.

[3] Section 26A

Insert after section 26—

26A Use of Corrective Services staff to convey national security interest detainees

- (1) The Commissioner of Corrective Services may, at the request of the Secretary, authorise a correctional officer to convey a national security interest detainee to or from a detention centre.

- (2) A correctional officer who conveys a national security interest detainee in accordance with the Commissioner's authorisation has the following functions and immunities in relation to the detainee—
- (a) the functions and immunities of a juvenile justice officer in relation to a detainee, and
 - (b) the functions and immunities of a correctional officer in relation to an inmate under the *Crimes (Administration of Sentences) Act 1999*.
- (3) In this section—
national security interest detainee means a detainee designated by the Secretary as a national security interest detainee under the regulations.

[4] Section 28 Transfer of older detainees from detention centres to correctional centres

Omit "Subsection (2) does not apply" from section 28(2C).

Insert instead "The limitations on the making of an order under subsection (1) that are specified in subsection (2) do not apply".

[5] Section 28(2D)

Omit "Subsection (2A) does not apply".

Insert instead "The limitations on the making of an order under subsection (1) that are specified in subsection (2A) do not apply".

[6] Section 91 Security of certain information

Omit section 91(1).

[7] Section 91(2)

Omit "A person is not required to comply with an information requirement to provide a copy of a report or other document if compliance with the requirement".

Insert instead "Nothing in this Act or the regulations requires a person to be provided with a copy of a report or another document, or part of the report or document, if its provision to the person".

[8] Section 91(3)

Omit "A person is not required to comply with an information requirement to provide information about any part of the content of a report or other document if a copy of the report or document cannot be provided because of subsection (2) and".

Insert instead "Nothing in this Act or the regulations requires a person to be provided with information about the content of a report or other document, a copy of which is not required to be provided to a person by operation of subsection (2), if".

Explanatory note

Item [2] of the proposed amendments prevents a person aged between 18 and 21 years from being detained in a detention centre if the person has been in custody in a correctional centre for more than 4 weeks or has, in relation to the person's current period of custody in a correctional centre, been transferred from a detention centre to a correctional centre. The provision does not apply if the person is transferred from a correctional centre to a detention centre by order of the Minister administering the *Crimes (Administration of Sentences) Act 1999*.

Item [3] allows national security interest detainees to be conveyed by correctional officers to or from detention centres if authorised to do so by the Commissioner of Corrective Services at the request of the Secretary of the Department of Communities and Justice. Correctional officers will have, in relation to the detainees, the same functions and immunities as juvenile justice officers have when dealing with detainees, and also the same functions and immunities as correctional officers have when dealing with inmates under the *Crimes (Administration of Sentences) Act 1999*.

Items [7] and [8] ensure that nothing in or under the *Children (Detention Centres) Act 1987* requires a report, document or information to be provided to a person if a Children's Magistrate is of the opinion that providing it would prejudice the public interest or cause other adverse consequences. Item [6] makes a consequential amendment. The amendments make the amended provision consistent with an equivalent provision of the *Crimes (Administration of Sentences) Act 1999*.

Items [4] and [5] are minor amendments to clarify the operation of provisions limiting the power to transfer an older detainee from a detention centre to a correctional centre.

Item [1] revises terminology.

1.3 Court Suppression and Non-publication Orders Act 2010 No 106

Section 17 Proceedings for offences

Insert after section 17(2)—

- (3) Proceedings for an offence under this Act that are brought before the Local Court must be commenced within 2 years of the date of the alleged offence.

Explanatory note

The proposed amendment extends the time limit for commencing summary proceedings in the Local Court for the offence of contravening a suppression order or non-publication order. The proposed amendment extends the time limit from within 6 months of the date of the alleged offence to within 2 years.

1.4 Crimes Act 1900 No 40

[1] Section 316 Concealing serious indictable offence

Insert after section 316(1)—

- (1A) For the purposes of subsection (1), a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force or other appropriate authority if—
- (a) the information relates to a sexual offence or a domestic violence offence against a person (the *alleged victim*), and
 - (b) the alleged victim was an adult at the time the information was obtained by the person, and
 - (c) the person believes on reasonable grounds that the alleged victim does not wish the information to be reported to police or another appropriate authority.
- (1B) Subsection (1A) does not limit the grounds on which it may be established that a person has a reasonable excuse for failing to bring information to the attention of a member of the NSW Police Force or other appropriate authority.

[2] Section 316(6)

Insert in alphabetical order—

domestic violence offence has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

sexual offence means the following offences—

- (a) an offence under a provision of Division 10 of Part 3 where the alleged victim is an adult,
- (b) an offence under a previous enactment that is substantially similar to an offence referred to in paragraph (a).

Explanatory note

Item [1] of the proposed amendments makes it a reasonable excuse for a person to fail to report information relating to alleged sexual offences and alleged domestic violence offences to police and other authorities if the alleged victim is an adult and the person believes on reasonable grounds that

the alleged victim does not wish the information to be reported. Item [2] defines terms for the purposes of the reasonable excuse.

1.5 Crimes (Administration of Sentences) Act 1999 No 93

Section 3 Interpretation

Insert at the end of section 3(2)(d)—

, and

- (e) a reference to a condition that a person not commit any offence is a reference to any offence whether committed in New South Wales or in any other State or Territory, and
- (f) a reference to an obligation that a person not commit any offence is a reference to any offence whether committed in New South Wales or in any other State or Territory.

Explanatory note

The proposed amendment clarifies that where an offender is released on parole, on a re-integration home detention order, an intensive correction order, a community correction order or a conditional release order and that release has a condition that the offender must not commit any offence, the condition applies to an offence committed in New South Wales or in any other State or Territory.

1.6 Crimes (Appeal and Review) Act 2001 No 120

[1] Section 4 Applications to Local Court

Omit “Minister” from section 4(2)(b). Insert instead “Attorney General”.

[2] Section 5, heading

Omit “Minister”. Insert instead “Attorney General”.

[3] Sections 5, 77, 87 and 114A

Omit “Minister” wherever occurring. Insert instead “Attorney General”.

[4] Section 69

Omit the section. Insert instead—

69 Effect of confirmation of sentence on good behaviour bonds, community correction orders and conditional release orders

- (1) The following continue to have effect if an appeal court confirms a sentence on appeal—
 - (a) a good behaviour bond entered into by the appellant as a consequence of the original sentence,
 - (b) a community correction order or conditional release order made in relation to the appellant as a consequence of the original sentence.
- (2) The bond or order continues to have effect—
 - (a) according to its terms, except to the extent to which the appeal court otherwise directs, and
 - (b) despite any stay of execution that has been in force in respect of the sentence.

Explanatory note

Item [3] of the proposed amendments provides that certain functions of the Minister administering the Act are to be exercised by the Attorney General instead. Items [1] and [2] make consequential amendments.

Item [4] makes it clear that if an appeal court confirms a sentence on appeal, a community correction order or conditional release order made in relation to the appellant as a consequence of that sentence continues to have effect according to its terms, except to the extent to which the appeal court otherwise directs.

1.7 Crimes (Sentencing Procedure) Act 1999 No 92

Section 3 Interpretation

Insert at the end of section 3(2)(d)—

, and

- (e) a reference to a condition that a person not commit any offence is a reference to any offence whether committed in New South Wales or in any other State or Territory, and
- (f) a reference to an obligation that a person not commit any offence is a reference to any offence whether committed in New South Wales or in any other State or Territory.

Explanatory note

The proposed amendment clarifies that where an offender is sentenced to an intensive correction order, a community correction order or a conditional release order and that order has a condition that the offender must not commit any offence, the condition applies to an offence committed in New South Wales or in any other State or Territory.

1.8 Criminal Records Act 1991 No 8

[1] Section 8 When is a conviction spent?

Omit “term and with 1 or more additional or further conditions imposed under that Act” from section 8(4)(c).

Insert instead “period”.

[2] Section 13 Unlawful disclosure of information concerning spent convictions

Insert after section 13(4)—

- (4AA) It is not an offence for a person employed in Corrective Services NSW to make information relating to a spent conviction available to another person if—
 - (a) making the information available is not an offence under the *Crimes (Administration of Sentences) Act 1999*, and
 - (b) the person employed in Corrective Services NSW does not know, and could not reasonably be expected to know, the conviction is a spent conviction.

[3] Section 13(5)

Insert in alphabetical order—

Corrective Services NSW has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.

Explanatory note

Item [1] of the proposed amendments provides that a finding that an offence has been proved, where a conditional release order under section 9 of the *Crimes (Sentencing Procedure) Act 1999* is made, with no conviction recorded and no additional or further conditions imposed, is spent on satisfactory completion of the order. Currently, the finding is spent immediately after the order is made. The effect of the amendment is that all conditional release orders, whether or not a conviction is recorded and whether or not additional or further conditions are imposed, will not be spent until the order is completed.

Item [2] provides that it is not an offence if a person employed in Corrective Services NSW discloses information relating to a spent conviction where the disclosure is not an offence under the *Crimes*

(*Administration of Sentences*) Act 1999 and the person does not know, and could not reasonably be expected to know, the conviction is a spent conviction. Item [3] makes a consequential amendment.

1.9 Drug Misuse and Trafficking Act 1985 No 226

[1] Schedule 1

Omit the matter relating to “Delta-9-tetrahydrocannabinol (dronabinol) where prepared and packed for therapeutic use”.

[2] Schedule 1

Insert in alphabetical order—

Dronabinol (Delta-9-tetrahydrocannabinol)	0.6g	0.2g	1.0g	0.1kg	0.5kg	—
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Explanatory note

The proposed amendment addresses confusion caused by the implication in the existing entry that dronabinol is a prohibited drug only when prepared and packed for therapeutic use.

1.10 Justice Legislation Amendment Act (No 3) 2018 No 87

[1] Schedule 1 Principal amendments

Insert “, or to which the person otherwise has or had access,” after “information obtained” in section 102(1) of the *Children (Detention Centres) Act 1987* as substituted by Schedule 1.4[4].

[2] Schedule 1.4[4], section 102A(1) of the Children (Detention Centres) Act 1987

Insert “, or to which the Secretary otherwise has or had access,” after “by the Secretary”.

[3] Schedule 1.4[4], section 102B(5) of the Children (Detention Centres) Act 1987

Omit the definition of *relevant agency*. Insert instead—

relevant agency means—

- (a) a law enforcement agency, or
- (b) an intelligence agency of an Australian jurisdiction, or
- (c) a government agency of a State or Territory that corresponds with the Department, or
- (d) a person or body prescribed by the regulations.

Explanatory note

Items [1] and [2] of the proposed amendments clarify that uncommenced provisions of the *Children (Detention Centres) Act 1987* limiting or authorising disclosure of information apply in relation to information to which a person, or the Secretary of the Department of Communities and Justice (the **Secretary**), has or had access in connection with the administration or execution of that Act.

Item [3] enables the Secretary to enter into an information sharing arrangement with an intelligence agency. Item [3] also provides that all law enforcement agencies and government agencies of a State or Territory that correspond with the Department of Communities and Justice may enter into information sharing arrangements without being prescribed by the regulations.

The amendments make the amended provisions consistent with equivalent provisions of the *Crimes (Administration of Sentences) Act 1999*.

1.11 Law Enforcement (Powers and Responsibilities) Act 2002 No 103

Section 9 Power to enter in emergencies

Insert at the end of section 9(1)(b)—

, or

- (c) the body of a person who has died, otherwise than as a result of an offence, is on the premises and there is no occupier on the premises to consent to the entry.

- (1A) Before entering premises under subsection (1)(c), the police officer must obtain approval to do so (orally or in writing) from a police officer of or above the rank of Inspector.

Explanatory note

The proposed amendment provides that a police officer may enter premises if the police officer believes on reasonable grounds that a deceased person is on the premises, that the person's death is not the result of an offence and that no other person is present on the premises to consent to the entry. The entry must be authorised by a police officer of the rank of Inspector or higher.

1.12 Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12

[1] Schedule 3 Amendment of Acts

Insert after Schedule 3.4—

3.4A Civil Liability Act 2002 No 22

[1] Section 3 Definitions

Insert in alphabetical order—

cognitive impairment has the same meaning as in the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

mental health impairment has the same meaning as in the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

special verdict of act proven but not criminally responsible has the same meaning as in the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

[2] Section 26K Interpretation

Omit section 26K(2)(b). Insert instead—

- (b) extends to conduct of a person that would have constituted an offence if the person had not at the time of the conduct had—
 - (i) a mental health impairment, or
 - (ii) a cognitive impairment, or
 - (iii) both, and
- (c) applies whether or not—
 - (i) a special verdict of act proven but not criminally responsible is entered concerning that conduct, or
 - (ii) the person was found by a court to be unfit to be tried for an offence.

[3] Section 26W Division overrides Part 7 Division 2

Omit “(Supervision of damages arising out of criminal conduct by persons suffering from mental illness)”.

[4] Sections 52(1)(b), 54A(1)(b) and (4)(b) and 54C(1)(b) and (3)(b)

Omit “been suffering from a mental illness” wherever occurring.

Insert instead “had a mental health impairment or a cognitive impairment”.

[5] Section 54A, heading

Omit “mentally ill”. Insert instead “impaired”.

[6] Section 54A(5)

Omit “mental illness”. Insert instead “mental health impairment or cognitive impairment”.

[7] Section 54A(5)

Omit “an illness”. Insert instead “an impairment”.

[8] Part 7, Division 2, heading

Omit “suffering from mental illness” from the heading.

Insert instead “with a mental health impairment or a cognitive impairment”.

[9] Schedule 1 Savings and transitional provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Provision consequent on enactment of Mental Health and Cognitive Impairment Forensic Provisions Act 2020

References to mental illness

A reference in this Act to a mental health impairment or a cognitive impairment is taken to include, for anything occurring before the commencement of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, a reference to a mental illness.

[2] Schedule 3.9[3]

Insert after item [2]—

[3] Section 112 Other appeal or review rights not affected

Omit “ground of mental illness where mental illness” from section 112(1).
Insert instead “grounds of mental health impairment or cognitive impairment if the defence of mental health impairment or cognitive impairment”.

[3] Schedule 3.13A

Insert after Schedule 3.13—

3.13A Forfeiture Act 1995 No 65

[1] Section 10 Definitions

Omit the definition of *offender*. Insert instead—

offender means a person who has killed another person and for whom a special verdict of act proven but not criminally responsible is entered.

special verdict of act proven but not criminally responsible has the same meaning as in the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

[2] Section 11 Power of Supreme Court to apply forfeiture rule

Omit section 11(1). Insert instead—

- (1) If a person is not subject to the forfeiture rule because the person is an offender, any interested person may apply to the Supreme Court for an order that the forfeiture rule apply as if the offender had been found guilty of murder.

Explanatory note

The proposed amendments to each Act are consequential to the passage of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*. The amendments will commence on commencement of that Act.

1.13 Mental Health (Forensic Provisions) Amendment (Victims) Act 2018 No 85

Schedule 3 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

Omit the Schedule.

Explanatory note

The proposed amendment repeals the uncommenced Schedule 3 to the *Mental Health (Forensic Provisions) Amendment (Victims) Act 2018* as the same provisions were inserted into the *Crimes (Sentencing Procedure) Act 1999* by the *Crimes Legislation Amendment (Victims) Act 2018*.

1.14 Scrap Metal Industry Act 2016 No 42

[1] Section 16 Transaction records

Omit section 16(1)(c). Insert instead—

- (c) if the sale is conducted by a corporation—
 - (i) the name, business address and ABN of the corporation, and
 - (ii) unless subsection (1A) applies, a statement signed by an executive officer of the corporation, or an employee authorised in writing by an executive officer of the corporation, consenting to the sale (a *sale consent*),

[2] Section 16(1A)

Insert after section 16(1)—

- (1A) A record of a sale consent is not required in respect of a sale conducted by a corporation if—
 - (a) the terms of the sale are within the terms of a statement signed by an executive officer of the corporation, or an employee authorised in writing by an executive officer of the corporation, authorising the corporation to sell scrap metal to the scrap metal dealer, and
 - (b) the statement was signed no more than 12 months before the date of the sale and has not been withdrawn, and
 - (c) the scrap metal dealer keeps a record of the statement.

Explanatory note

Item [2] of the proposed amendments provides that a record of sale consent is not required for a sale made by a corporation to a scrap metal dealer if the corporation has a current authorisation to sell to the scrap metal dealer. The terms of the sale must be within the terms of the authorisation, a record of which must be kept by the scrap metal dealer. Currently, scrap metal dealers are required to obtain a separate consent in respect of each transaction with a corporation. Item [1] makes a consequential amendment.

1.15 Surveillance Devices Act 2007 No 64

[1] Section 4 Definitions

Omit “or Division 3A of Part 6 of the *Crimes (Administration of Sentences) Act 1999*” from paragraph (q) of the definition of **relevant proceeding** in section 4(1).

[2] Section 4(1), definition of “relevant proceeding”

Insert at the end of the definition—

- (s) a proceeding before the State Parole Authority under Part 6 or 7 of the *Crimes (Administration of Sentences) Act 1999*,
- (t) an application under the *Crimes (Serious Crime Prevention Orders) Act 2016* to an appropriate court within the meaning of that Act, or an appeal under section 11 of that Act,
- (u) an application under Part 5 of the *Crimes (Forensic Procedures) Act 2000*,
- (v) a proceeding before the Civil and Administrative Tribunal in respect of an application for administrative review under section 75(1)(a) or (f) of the *Firearms Act 1996*.

[3] Section 18

Omit the section. Insert instead—

18 Remote application

- (1) An application for a surveillance device warrant may be made under section 17 by telephone, e-mail or any other means of communication if—
 - (a) a law enforcement officer reasonably believes that it is impracticable for the application to be made in person, or
 - (b) a law enforcement officer reasonably believes that the immediate use of a surveillance device is necessary, or
 - (c) the eligible Judge or eligible Magistrate who is to determine the application requests that it is made that way.
- (2) If an affidavit has been prepared, the person applying must transmit a copy of the affidavit, whether sworn or unsworn, to the eligible Judge or eligible Magistrate who is to determine the application.

[4] Section 19 Determining the application

Omit section 19(1)(c). Insert instead—

- (c) in the case of a remote application—the application is made in accordance with section 18, and

[5] Section 26

Omit the section. Insert instead—

26 Remote application

- (1) An application for a retrieval warrant may be made under section 25 by telephone, e-mail or any other means of communication if—
 - (a) a law enforcement officer reasonably believes that it is impracticable for the application to be made in person, or

- (b) the eligible Judge or eligible Magistrate who is to determine the application requests that it is made that way.
- (2) If an affidavit has been prepared, the person applying must transmit a copy of the affidavit, whether sworn or unsworn, to the eligible Judge or eligible Magistrate who is to determine the application.

[6] Section 27 Determining an application

Omit section 27(1)(c). Insert instead—

- (c) in the case of a remote application—the application is made in accordance with section 26, and

[7] Section 33 Application for approval after use of surveillance device without warrant or under emergency authorisation

Insert after section 33(1)—

- (1A) Subsection (1) does not apply if the law enforcement officer uses an optical surveillance device to observe, but not record, the carrying on of an activity.

[8] Section 33(3B)

Insert after section 33(3A)—

- (3B) An application for approval under this section may be made by e-mail or any other means of communication if the eligible Judge who is to determine the application requests that it is made that way.

Explanatory note

Item [2] of the proposed amendments expands the list of court, tribunal and other proceedings in which certain protected information, including information obtained from the use of a surveillance device, may be used, published or communicated. Item [1] makes a consequential amendment.

Items [3] and [5] remove references to transmission of applications for warrants being made by fax and also allow for remote applications to be made if the eligible Judge or Magistrate requests that they are made that way. Items [4] and [6] make consequential amendments.

Item [5] also removes the requirement for an affidavit relating to an application for a retrieval warrant to be transmitted by fax and allows it to be transmitted by any other appropriate method such as e-mail.

Item [7] provides an exception from the requirement that a law enforcement officer apply to an eligible Judge for approval of the use of an optical surveillance device without a warrant in an emergency. The exception applies if the law enforcement officer uses an optical surveillance device only to observe the carrying on of an activity, not to record.

Item [8] clarifies that in person applications are not required and that applications may be made by use of modern technology, such as encrypted e-mail.

1.16 Terrorism (Police Powers) Act 2002 No 115

[1] Section 24A Police Commissioner may declare this Part applies to terrorist act to which police are responding

Omit “may be made in respect of the specified location at which police officers are responding and in respect of any other related specified location” from section 24A(2).

Insert instead “made under this Part applies to each location at which police officers are responding to the incident”.

[2] Section 36 Review of Act

Insert after section 36(1B)—

- (1C) For the purposes of the review, the Minister may require the Commissioner of Police to provide information about declarations made by the Commissioner under Part 2AAA.

Explanatory note

Item [1] of the proposed amendments provides that a declaration that an incident is a terrorist act applies to each location at which police officers are responding to the incident.

Item [2] provides that, for the purposes of reviewing the *Terrorism (Police Powers) Act 2002* to determine whether its policy objectives remain valid and its terms remain appropriate for securing those objectives, the Minister may require the Commissioner of Police to provide information about declarations that incidents are terrorist acts.