

Crimes Legislation Amendment (Terrorism) Bill 2004

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
The *Sydney Opera House Trust Amendment Bill 2004* is cognate with this Bill.

Overview of Bill

The object of this Bill is to make a number of miscellaneous amendments to the *Crimes Act 1900*, the *Criminal Procedure Act 1986*, the *Terrorism (Police Powers) Act 2002* and the *State Emergency and Rescue Management Act 1989* arising from a review of offences and powers relating to terrorism.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act:

(a) on a day or days appointed by proclamation for amendments related to offences (Schedules 1 and 2), and

(b) on the date of assent for amendments related to powers (Schedules 3 and 4).

Clause 3 is a formal provision that gives effect to the amendments to the *Crimes Act 1900* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendment to the *Criminal Procedure Act 1986* set out in Schedule 2.

Clause 5 is a formal provision that gives effect to the amendments to the *Terrorism (Police Powers) Act 2002* set out in Schedule 3.

Clause 6 is a formal provision that gives effect to the amendment to the *State Emergency and Rescue Management Act 1989* set out in Schedule 4.

Schedule 1 Amendment of Crimes Act 1900

Schedule 1 [1] inserts an interpretation provision into section 4. At present, various offences against the person refer to the administration or taking of poison or other destructive or noxious thing, for example, section 41 (Administering poison etc with intent to injure or annoy) and section 39 (Using poison etc so as to endanger life). The amendment makes it clear that the offence is committed if the poison or thing is caused to be administered or taken by causing any person to inhale, take or be exposed to the poison or thing by its release into the person's environment.

Schedule 1 [2] revises section 48 (which currently makes it an offence to place, or throw, an explosive in or near a building, ship or vessel) to extend the offence to a public place and to any vehicle, train or other conveyance.

Schedule 1 [3] amends section 55 to increase the maximum penalty for the possession or making of explosives, noxious things or any other instrument or thing, with the intention of injuring persons, from imprisonment for 5 years to imprisonment for 10 years.

Schedule 1 [4] amends the heading to Part 3B (which currently relates to firearms and related offences) to reflect the addition of offences relating to explosives (see items [5] and [9]).

Schedule 1 [5] inserts proposed section 93FA into the Act to deal with the possession or making of explosives.

Proposed section 93FA (1) creates a new offence (maximum penalty: imprisonment for 5 years) if a person possesses explosives in a public place without reasonable excuse or lawful purpose.

Proposed section 93FA (2)–(4) contains the summary offence, currently in section 545D, of possessing or making explosives in suspicious circumstances and increases the maximum penalty from imprisonment for 1 year or a fine of 10

penalty units (or both) to imprisonment for 2 years or a fine of 50 penalty units (or both).

Schedule 1 [6] amends section 200 to increase the maximum penalty for the possession of explosives with the intention of maliciously destroying or damaging property from imprisonment for 3 years to imprisonment for 7 years.

Schedule 1 [7] amends section 203A to extend the definition of *public facility* in connection with offences related to sabotage so as to include the sabotage or threatened sabotage of public computer systems (including systems providing banking or other services to the public).

Schedule 1 [8] omits section 545D consequent on its transfer to Part 3B, as proposed section 93FA (2)–(4) (see item [5]).

Schedule 1 [9] and [10] transfer section 545E (an explosives-related offence) to Part 3B, which is being extended to explosives offences.

Schedule 2 Amendment of Criminal Procedure Act 1986

Schedule 2 amends Table 2 of Schedule 1 to the Act to provide that the proposed new offence of possessing explosives in a public place is to be tried summarily, unless the prosecution otherwise elects.

Schedule 3 Amendment of Terrorism (Police Powers) Act 2002

Schedule 3 [1] amends section 5 to clarify the circumstances in which the special powers conferred by the Act may be authorised. At present the special powers are only exercisable if the Commissioner or a Deputy Commissioner of Police (or other available senior police officer) is satisfied that there are reasonable grounds for believing that there is an imminent threat of a terrorist act. The proposed amendment will require the Commissioner etc to be satisfied that there are reasonable grounds for believing that there is a threat of a terrorist act occurring in the near future.

Schedule 3 [2] inserts proposed section 14A into the Act to authorise the Commissioner of Police or a Deputy Commissioner (or other available senior police officer) to give directions to government agencies (and their members and officers) to facilitate the exercise of the special powers conferred on police officers under the Act when an authority to exercise those powers is given by the Commissioner, Deputy Commissioner or other senior officer.

Schedule 3 [3] inserts proposed section 19A into the Act to confer specific power on police officers to place a roadblock or other cordon in or around a target area where police officers are authorised to exercise special powers under the Act to search persons, vehicles or premises.

Schedule 4 Amendment of State Emergency and Rescue Management Act 1989

Schedule 4 amends section 4 (Definition of “emergency”) to make it clear that a terrorist act is included in the actual or imminent occurrences (such as fires, floods, storms, earthquakes, explosions, accidents, epidemics or warlike actions) that can constitute an emergency for the purposes of the Act. Accordingly, the Premier may declare a state of emergency under section 33 of the Act in connection with such an emergency if satisfied that it constitutes a significant and widespread danger to life or property in New South Wales.