

Terrorism (Commonwealth Powers) Bill 2002

CONTENTS

1.	Short title and purpose	1
2.	Commencement	2
3.	Definitions	2
4.	Reference of matters	3
5.	Termination of references	4
	Schedule 1 — Part 5.3 of Commonwealth Criminal Code	5

Western Australia

LEGISLATIVE ASSEMBLY

(As amended during consideration in detail)

Terrorism (Commonwealth Powers) Bill 2002

A Bill for

An Act to refer certain matters relating to terrorist acts to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth.

The Parliament of Western Australia enacts as follows:

1. Short title and purpose

- (1) This Act may be cited as the *Terrorism (Commonwealth Powers) Act 2002*.
- (2) The purpose of this Act is to refer certain matters relating to terrorist acts to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth.

s. 2

2. Commencement

This Act comes into operation on a day fixed by proclamation.

3. Definitions

In this Act —

5 **“Commonwealth Criminal Code”** means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth, or a law of the Commonwealth that replaces that Code;

10 **“criminal responsibility legislation”** means the provisions of Chapter 2 of the Commonwealth Criminal Code, as in force from time to time;

15 **“express amendment”** of the terrorism legislation or the criminal responsibility legislation means the direct amendment of the text of the legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by Commonwealth Acts, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the legislation;

20 **“references”** means the references under section 4(1)(a) and (b);

“referred provisions” means the text set out in Schedule 1 to the extent to which it deals with matters that are included in the legislative powers of the Parliament of the State;

25 **“terrorism legislation”** means the provisions of Part 5.3 of the Commonwealth Criminal Code enacted in the terms, or substantially in the terms, of the text set out in Schedule 1 and as in force from time to time;

30 **“terrorist act”** has the same meaning it has in the text set out in Schedule 1.

4. Reference of matters

- (1) The following matters are referred to the Parliament of the Commonwealth —
- 5 (a) the matters to which the referred provisions relate, but only to the extent of the making of laws with respect to those matters by including the referred provisions in the Commonwealth Criminal Code in the terms, or substantially in the terms, of the text set out in Schedule 1; and
- 10 (b) the matter of terrorist acts, and actions relating to terrorist acts, but only to the extent of the making of laws with respect to that matter by making express amendments of the terrorism legislation or the criminal responsibility legislation.
- 15 (2) The reference of a matter under subsection (1) has effect only —
- 20 (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth); and
- (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.
- 25 (3) The operation of each paragraph of subsection (1) is not affected by the other paragraph.
- (4) For the avoidance of doubt, it is the intention of the Parliament of the State that —
- 30 (a) the terrorism legislation or the criminal responsibility legislation may be expressly amended, or have its operation otherwise affected, at any time after the commencement of this Act by provisions of Commonwealth Acts the operation of which is based on

s. 5

- legislative powers that the Parliament of the Commonwealth has apart from under the references; and
- (b) the terrorism legislation or the criminal responsibility legislation may have its operation affected, otherwise than by express amendment, at any time after the commencement of this Act by provisions of instruments authorised by that legislation.
- (5) Despite any other provision of this section, the references have effect for a period —
- (a) beginning on the day on which this Act comes into operation; and
- (b) ending on the day fixed, pursuant to section 5, as the day on which the references under this Act are to terminate, but no longer.
- 5. Termination of references**
- (1) The Governor may, at any time, by proclamation, fix a day as the day on which the references are to terminate.
- (2) The day fixed under subsection (1) must be no earlier than the first day after the end of the period of 3 months beginning with the day on which the proclamation is published in the *Gazette*.
- (3) The Governor may, by proclamation, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 4) never to have been published.
- (4) A revoking proclamation has effect only if published before the day fixed under subsection (1).
- (5) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.
- (6) A proclamation is to be made under this section if and only if the making of that proclamation has been recommended by resolution passed by both Houses of Parliament of this State.

Schedule 1 — Part 5.3 of Commonwealth Criminal Code

(Section 3)

Part 5.3 Terrorism

Division 100 Preliminary

5 100.1 Definitions

(1) In this Part:

Commonwealth place has the same meaning as in the
Commonwealth Places (Application of Laws) Act 1970.

10 *constitutional corporation* means a corporation to which
paragraph 51 (xx) of the Constitution applies.

express amendment of the provisions of this Part or Chapter 2
means the direct amendment of the provisions (whether by the
insertion, omission, repeal, substitution or relocation of words
or matter).

15 *funds* means:

(a) property and assets of every kind, whether tangible or
intangible, movable or immovable, however acquired;
and

20 (b) legal documents or instruments in any form, including
electronic or digital, evidencing title to, or interest in,
such property or assets, including, but not limited to,
bank credits, travellers cheques, bank cheques, money
orders, shares, securities, bonds, debt instruments, drafts
and letters of credit.

25 *organisation* means a body corporate or an unincorporated
body whether or not the body:

- (a) is based outside Australia; or
- (b) consists of persons who are not Australian citizens; or
- (c) is part of a larger organisation.

30 *referring State* has the meaning given by section 100.2.

terrorist act means an action or threat of action where:

- (a) the action falls within subsection (2) and does not fall within subsection (3); and
- 5 (b) the action is done or the threat is made with the intention of advancing a political, religious or ideological cause; and
- (c) the action is done or the threat is made with the intention of:
 - 10 (i) coercing, or influencing by intimidation, the government of the Commonwealth or a State, Territory or foreign country, or of part of a State, Territory or foreign country; or
 - (ii) intimidating the public or a section of the public.
- (2) Action falls within this subsection if it:
 - 15 (a) causes serious harm that is physical harm to a person; or
 - (b) causes serious damage to property; or
 - (c) causes a person's death; or
 - (d) endangers a person's life, other than the life of the person taking the action; or
 - 20 (e) creates a serious risk to the health or safety of the public or a section of the public; or
 - (f) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to:
 - (i) an information system; or
 - 25 (ii) a telecommunications system; or
 - (iii) a financial system; or
 - (iv) a system used for the delivery of essential government services; or
 - (v) a system used for, or by, an essential public utility; or
 - 30 (vi) a system used for, or by, a transport system.

(3) Action falls within this subsection if it:

- (a) is advocacy, protest, dissent or industrial action; and
- (b) is not intended:
 - (i) to cause serious harm that is physical harm to a person; or
 - (ii) to cause a person's death; or
 - (iii) to endanger the life of a person, other than the person taking the action; or
 - (iv) to create a serious risk to the health or safety of the public or a section of the public.

(4) In this Division:

- (a) a reference to any person or property is a reference to any person or property wherever situated, within or outside Australia; and
- (b) a reference to the public includes a reference to the public of a country other than Australia.

100.2 Referring States

(1) A State is a *referring State* if the Parliament of the State has referred the matters covered by subsections (2) and (3) to the Parliament of the Commonwealth for the purposes of paragraph 51 (xxxvii) of the Constitution:

- (a) if and to the extent that the matters are not otherwise included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under paragraph 51 (xxxvii) of the Constitution); and
- (b) if and to the extent that the matters are included in the legislative powers of the Parliament of the State.

This subsection has effect subject to subsection (5).

(2) This subsection covers the matters to which the referred provisions relate to the extent of making laws with respect to those matters by including the referred provisions in this Code.

- (3) This subsection covers the matter of terrorist acts, and actions relating to terrorist acts, to the extent of the making of laws with respect to that matter by making express amendment of this Part or of Chapter 2.
- 5 (4) A State is a referring State even if a law of the State provides that the reference to the Commonwealth Parliament of either or both of the matters covered by subsections (2) and (3) is to terminate in particular circumstances.
- 10 (5) A State ceases to be a referring State if a reference by the State of either or both of the matters covered by subsections (2) and (3) terminates.
- (6) In this section:
- 15 *referred provisions* means the provisions of Part 5.3 of this Code as inserted by the *Criminal Code Amendment (Terrorism) Act 2002*, to the extent to which they deal with matters that are included in the legislative powers of the Parliaments of the States.

100.3 Constitutional basis for the operation of this Part

(1) Operation in a referring State

The operation of this Part in a referring State is based on:

- 20 (a) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51 (xxxvii)); and
- (b) the legislative powers that the Commonwealth Parliament has in respect of matters to which this Part relates because those matters are referred to it by the Parliament of the referring State under paragraph 51 (xxxvii) of the Constitution.
- 25

Note. The State reference fully supplements the Commonwealth Parliament's other powers by referring the matters to the Commonwealth Parliament to the extent to which they are not otherwise included in the legislative powers of the Commonwealth Parliament.

30

(2) Operation in a non-referring State

The operation of this Part in a State that is not a referring State is based on the legislative powers that the Commonwealth

Parliament has under section 51 of the Constitution (other than paragraph 51 (xxxvii)).

Note. Subsection 100.4 (5) identifies particular powers that are being relied on.

5 (3) **Operation in a Territory**

The operation of this Part in the Northern Territory, the Australian Capital Territory or an external Territory is based on:

- 10 (a) the legislative powers that the Commonwealth Parliament has under section 122 of the Constitution to make laws for the government of that Territory; and
- (b) the legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51 (xxxvii)).

15 Despite subsection 22 (3) of the *Acts Interpretation Act 1901*, this Part as applying in those Territories is a law of the Commonwealth.

 (4) **Operation outside Australia**

The operation of this Part outside Australia and the external Territories is based on:

- 20 (a) the legislative powers that the Commonwealth Parliament has under paragraph 51 (xxix) of the Constitution; and
- (b) the other legislative powers that the Commonwealth Parliament has under section 51 of the Constitution (other than paragraph 51 (xxxvii)).

25 **100.4 Application of provisions**

 (1) **Part generally applies to all terrorist acts and preliminary acts**

Subject to subsection (4), this Part applies to the following conduct:

- 30 (a) all actions or threats of action that constitute terrorist acts (no matter where the action occurs, the threat is made or the action, if carried out, would occur);

- (b) all actions (*preliminary acts*) that relate to terrorist acts but do not themselves constitute terrorist acts (no matter where the preliminary acts occur and no matter where the terrorist acts to which they relate occur or would occur).

5 **Note.** See the following provisions:

- (a) subsection 101.1 (2);
(b) subsection 101.2 (4);
(c) subsection 101.4 (4);
10 (d) subsection 101.5 (4);
(e) subsection 101.6 (3);
(f) section 102.9.

(2) **Operation in relation to terrorist acts and preliminary acts occurring in a State that is not a referring State**

15 Subsections (4) and (5) apply to conduct if the conduct is itself a terrorist act and:

- (a) the terrorist act consists of an action and the action occurs in a State that is not a referring State; or
(b) the terrorist act consists of a threat of action and the threat is made in a State that is not a referring State.

20 (3) Subsections (4) and (5) also apply to conduct if the conduct is a preliminary act that occurs in a State that is not a referring State and:

- (a) the terrorist act to which the preliminary act relates consists of an action and the action occurs, or would occur, in a State that is not a referring State; or
25 (b) the terrorist act to which the preliminary act relates consists of a threat of action and the threat is made, or would be made, in a State that is not a referring State.

30 (4) Notwithstanding any other provision in this Part, this Part applies to the conduct only to the extent to which the Parliament has power to legislate in relation to:

- (a) if the conduct is itself a terrorist act—the action or threat of action that constitutes the terrorist act; or

- (b) if the conduct is a preliminary act—the action or threat of action that constitutes the terrorist act to which the preliminary act relates.
- 5 (5) Without limiting the generality of subsection (4), this Part applies to the action or threat of action if:
- (a) the action affects, or if carried out would affect, the interests of:
- (i) the Commonwealth; or
- (ii) an authority of the Commonwealth; or
- 10 (iii) a constitutional corporation; or
- (b) the threat is made to:
- (i) the Commonwealth; or
- (ii) an authority of the Commonwealth; or
- (iii) a constitutional corporation; or
- 15 (c) the action is carried out by, or the threat is made by, a constitutional corporation; or
- (d) the action takes place, or if carried out would take place, in a Commonwealth place; or
- (e) the threat is made in a Commonwealth place; or
- 20 (f) the action involves, or if carried out would involve, the use of a postal service or other like service; or
- (g) the threat is made using a postal or other like service; or
- (h) the action involves, or if carried out would involve, the use of an electronic communication; or
- 25 (i) the threat is made using an electronic communication; or
- (j) the action disrupts, or if carried out would disrupt, trade or commerce:
- (i) between Australia and places outside Australia; or
- (ii) among the States; or

- (iii) within a Territory, between a State and a Territory or between 2 Territories; or
- (k) the action disrupts, or if carried out would disrupt:
- 5 (i) banking (other than State banking not extending beyond the limits of the State concerned); or
- (ii) insurance (other than State insurance not extending beyond the limits of the State concerned); or
- 10 (l) the action is, or if carried out would be, an action in relation to which the Commonwealth is obliged to create an offence under international law; or
- (m) the threat is one in relation to which the Commonwealth is obliged to create an offence under international law.
- 15 (6) To avoid doubt, subsections (2) and (3) apply to a State that is not a referring State at a particular time even if no State is a referring State at that time.

100.5 Application of *Acts Interpretation Act 1901*

- (1) The *Acts Interpretation Act 1901*, as in force on the day on which Schedule 1 to the *Criminal Code Amendment (Terrorism) Act 2002* commences, applies to this Part.
- 20 (2) Amendments of the *Acts Interpretation Act 1901* made after that day do not apply to this Part.

100.6 Concurrent operation intended

- (1) This Part is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- 25 (2) Without limiting subsection (1), this Part is not intended to exclude or limit the concurrent operation of a law of a State or Territory that makes:
- (a) an act or omission that is an offence against a provision of this Part; or
- 30 (b) a similar act or omission;
- an offence against the law of the State or Territory.

- (3) Subsection (2) applies even if the law of the State or Territory does any one or more of the following:
- (a) provides for a penalty for the offence that differs from the penalty provided for in this Part;
 - 5 (b) provides for a fault element in relation to the offence that differs from the fault elements applicable to the offence under this Part;
 - (c) provides for a defence in relation to the offence that differs from the defences applicable to the offence under this Part.
- 10 (4) If:
- (a) an act or omission of a person is an offence under this Part and is also an offence under the law of a State or Territory; and
 - 15 (b) the person has been punished for the offence under the law of the State or Territory;
- the person is not liable to be punished for the offence under this Part.

100.7 Regulations may modify operation of this Part to deal with interaction between this Part and State and Territory laws

- 20 (1) The regulations may modify the operation of this Part so that:
- (a) provisions of this Part do not apply to a matter that is dealt with by a law of a State or Territory specified in the regulations; or
 - 25 (b) no inconsistency arises between the operation of a provision of this Part and the operation of a State or Territory law specified in the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that the provision of this Part does not apply to:
- 30 (a) a person specified in the regulations; or
 - (b) a body specified in the regulations; or

Schedule 1 Part 5.3 of Commonwealth Criminal Code

- (c) circumstances specified in the regulations; or
- (d) a person or body specified in the regulations in the circumstances specified in the regulations.

(3) In this section:

5 *matter* includes act, omission, body, person or thing.

100.8 Approval for changes to or affecting this Part

(1) This section applies to:

- (a) an express amendment of this Part (including this section); and
- 10 (b) an express amendment of Chapter 2 that applies only to this Part (whether or not it is expressed to apply only to this Part).

(2) An express amendment to which this section applies is not to be made unless the amendment is approved by:

- 15 (a) a majority of the group consisting of the States, the Australian Capital Territory and the Northern Territory; and
- (b) at least 4 States.

Division 101 Terrorism

20 **101.1 Terrorist acts**

(1) A person commits an offence if the person engages in a terrorist act.

Penalty: Imprisonment for life.

25 (2) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

101.2 Providing or receiving training connected with terrorist acts

(1) A person commits an offence if:

- (a) the person provides or receives training; and

- 5
- (b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 25 years.

- 10
- (2) A person commits an offence if:
- (a) the person provides or receives training; and
 - (b) the training is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

15

Penalty: Imprisonment for 15 years.

- (3) A person commits an offence under this section even if the terrorist act does not occur.
- (4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.
- 20
- (5) If, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.
- 25

101.4 Possessing things connected with terrorist acts

- 30
- (1) A person commits an offence if:
- (a) the person possesses a thing; and

- 5
- (b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

- 10
- (2) A person commits an offence if:
- (a) the person possesses a thing; and
 - (b) the thing is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
 - (c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

15

Penalty: Imprisonment for 10 years.

- (3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.
- (4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.
- 20
- (5) Subsections (1) and (2) do not apply if the possession of the thing was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

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

- 25
- (6) If, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection
- 30
- of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.5 Collecting or making documents likely to facilitate terrorist acts

(1) A person commits an offence if:

- (a) the person collects or makes a document; and
- (b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
- (c) the person mentioned in paragraph (a) knows of the connection described in paragraph (b).

Penalty: Imprisonment for 15 years.

(2) A person commits an offence if:

- (a) the person collects or makes a document; and
- (b) the document is connected with preparation for, the engagement of a person in, or assistance in a terrorist act; and
- (c) the person mentioned in paragraph (a) is reckless as to the existence of the connection described in paragraph (b).

Penalty: Imprisonment for 10 years.

(3) A person commits an offence under subsection (1) or (2) even if the terrorist act does not occur.

(4) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this section.

(5) Subsections (1) and (2) do not apply if the collection or making of the document was not intended to facilitate preparation for, the engagement of a person in, or assistance in a terrorist act.

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

(6) If, in a prosecution for an offence (the *prosecuted offence*) against a subsection of this section, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of

5 an offence (the *alternative offence*) against another subsection of this section, the trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

101.6 Other acts done in preparation for, or planning, terrorist acts

- (1) A person commits an offence if the person does any act in preparation for, or planning, a terrorist act.
Penalty: Imprisonment for life.
- 10 (2) A person commits an offence under subsection (1) even if the terrorist act does not occur.
- (3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

Division 102 Terrorist organisations

15 **Subdivision A Definitions**

102.1 Definitions

- (1) In this Division:
- member* of an organisation includes:
- 20 (a) a person who is an informal member of the organisation; and
- (b) a person who has taken steps to become a member of the organisation; and
- (c) in the case of an organisation that is a body corporate—a director or an officer of the body corporate.
- 25 *recruit* includes induce, incite and encourage.
- terrorist organisation* means:
- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs); or

- (b) an organisation that is specified by the regulations for the purposes of this paragraph (see subsections (2), (3) and (4)).
- 5 (2) Before the Governor-General makes a regulation specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section, the Minister must be satisfied on reasonable grounds that:
- 10 (a) the Security Council of the United Nations has made a decision relating wholly or partly to terrorism; and
- (b) the organisation is identified in the decision, or using a mechanism established under the decision, as an organisation to which the decision relates; and
- 15 (c) the organisation is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act has occurred or will occur).
- (3) Regulations for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this section cease to have effect on the second anniversary of the day on which they take effect. To
- 20 avoid doubt, this subsection does not prevent:
- (a) the repeal of those regulations; or
- (b) the cessation of effect of those regulations under subsection (4); or
- 25 (c) the making of new regulations the same in substance as those regulations (whether the new regulations are made or take effect before or after those regulations cease to have effect because of this subsection).
- (4) A regulation specifying an organisation for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in this
- 30 section ceases to have effect when:
- (a) the decision mentioned in paragraph (2) (a) ceases to have effect; or

- (b) the organisation ceases to be identified as described in paragraph (2) (b).

The regulation does not revive even if the organisation is again identified as described in paragraph (2) (b).

- 5 (5) To avoid doubt, subsection (4) does not prevent:

- (a) the repeal of a regulation; or
- (b) the making of a regulation that is the same in substance as a regulation that has ceased to have effect because of that subsection.

- 10 (6) For the purpose of making regulations specifying an organisation for the purposes of paragraph (b) of the definition of **terrorist organisation** in this section, it does not matter whether the relevant decision of the Security Council of the United Nations was made before or after 6 July 2002.

15 **Subdivision B Offences**

102.2 Directing the activities of a terrorist organisation

- (1) A person commits an offence if:

- (a) the person intentionally directs the activities of an organisation; and
- 20 (b) the organisation is a terrorist organisation; and
- (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:

- 25 (a) the person intentionally directs the activities of an organisation; and
- (b) the organisation is a terrorist organisation; and
- (c) the person is reckless as to whether the organisation is a terrorist organisation.

30 Penalty: Imprisonment for 15 years.

102.3 Membership of a terrorist organisation

(1) A person commits an offence if:

- (a) the person intentionally is a member of an organisation;
and
- 5 (b) the organisation is a terrorist organisation because of paragraph (b) 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); and
- 10 (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 10 years.

- (2) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease to be a member of the
- 15 organisation as soon as practicable after the person knew that the organisation was a terrorist organisation.

Note. A defendant bears a legal burden in relation to the matter in subsection (2) (see section 13.4).

102.4 Recruiting for a terrorist organisation

20 (1) A person commits an offence if:

- (a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and
- (b) the organisation is a terrorist organisation; and
- 25 (c) the first-mentioned person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

- (a) the person intentionally recruits a person to join, or participate in the activities of, an organisation; and
- 30 (b) the organisation is a terrorist organisation; and

- (c) the first-mentioned person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

5 **102.5 Training a terrorist organisation or receiving training from a terrorist organisation**

- (1) A person commits an offence if:
 - (a) the person intentionally provides training to, or intentionally receives training from, an organisation; and
 - (b) the organisation is a terrorist organisation; and
 - 10 (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) A person commits an offence if:
 - 15 (a) the person intentionally provides training to, or intentionally receives training from, an organisation; and
 - (b) the organisation is a terrorist organisation; and
 - (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

20 **102.6 Getting funds to or from a terrorist organisation**

- (1) A person commits an offence if:
 - (a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and
 - 25 (b) the organisation is a terrorist organisation; and
 - (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

- (a) the person intentionally receives funds from, or makes funds available to, an organisation (whether directly or indirectly); and
- (b) the organisation is a terrorist organisation; and
- (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

(3) Subsections (1) and (2) do not apply to the person's receipt of funds from the organisation if the person proves that he or she received the funds solely for the purpose of the provision of:

- (a) legal representation for a person in proceedings relating to this Division; or
- (b) assistance to the organisation for it to comply with a law of the Commonwealth or a State or Territory.

Note. A defendant bears a legal burden in relation to the matter in subsection (3) (see section 13.4).

102.7 Providing support to a terrorist organisation

(1) A person commits an offence if:

- (a) the person intentionally provides to an organisation support or resources that would help the organisation engage in an activity described in paragraph (a) of the definition of **terrorist organisation** in this Division; and
- (b) the organisation is a terrorist organisation; and
- (c) the person knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

(2) A person commits an offence if:

- (a) the person intentionally provides to an organisation support or resources that would help the organisation

engage in an activity described in paragraph (a) of the definition of ***terrorist organisation*** in this Division; and

- (b) the organisation is a terrorist organisation; and
- (c) the person is reckless as to whether the organisation is a terrorist organisation.

Penalty: Imprisonment for 15 years.

Subdivision C General provisions relating to offences

102.9 Extended geographical jurisdiction for offences

Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against this Division.

102.10 Alternative verdicts

- (1) This section applies if, in a prosecution for an offence (the ***prosecuted offence***) against a subsection of a section of this Division, the trier of fact is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the ***alternative offence***) against another subsection of that section.
- (2) The trier of fact may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

Division 103 Financing terrorism

103.1 Financing terrorism

- (1) A person commits an offence if:
 - (a) the person provides or collects funds; and
 - (b) the person is reckless as to whether the funds will be used to facilitate or engage in a terrorist act.

Penalty: Imprisonment for life.

Note. Intention is the fault element for the conduct described in paragraph (1) (a). See subsection 5.6 (1).

- (2) A person commits an offence under subsection (1) even if the terrorist act does not occur.
- (3) Section 15.4 (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

5 Division 106 Transitional provisions

106.1 Saving—regulations made for the purposes of the definition of *terrorist organisation*

- (1) If:
 - (a) regulations were made before commencement for the purposes of paragraph (c) of the definition of ***terrorist organisation*** in subsection 102.1 (1), as in force before commencement; and
 - (b) the regulations were in force immediately before commencement;

the regulations have effect, after commencement, as if they had been made for the purposes of paragraph (b) of the definition of ***terrorist organisation*** in subsection 102.1 (1), as in force after commencement.
- (2) In this section, ***commencement*** means the commencement of this section.

=====