



Muslim Legal Network NSW

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## **'Terrorism' Offences: What are they and what do they cover?**

This Fact Sheet is prepared by the Muslim Legal Network NSW as a resource for participants who attended the community information night, *Counter-Terrorism Laws and You* on Sunday 6 December 2015. This Fact Sheet is adapted from the Australian Muslim Civil Rights Advocacy Network's publication, *Anti-Terrorism Law: ASIO, the Police and You* (3<sup>rd</sup> edition).

This Fact Sheet is **not** intended as legal advice. You should seek legal advice if you or someone you know becomes directly affected by Australia's Counter-Terrorism laws.

The information contained in this Fact Sheet is accurate as of February 2016.

### **'Terrorism act' Offences**

#### **What is a 'terrorist act'?**

A 'terrorist act' is an act done with the intention to coerce or influence the public or any government by intimidation to advance a political, religious or ideological cause. For an action to be a 'terrorist act', the person must also do, *or threaten* to do, one of the following:

- cause death or serious harm to a person;
- endanger a person;
- cause serious damage to property;
- endanger another person's life;
- create a serious risk to the safety or health of the public; or
- seriously interfere with, disrupt or destroy infrastructure like the phone system or electricity network.

#### **What is a 'terrorism act' offence?**

A 'terrorism act' offence includes:

- committing a 'terrorist act';

- planning or preparing a 'terrorist act';
- financing a 'terrorist act', whether or not the act occurs;
- providing or receiving training connected with 'terrorist act';
- collecting or making documents likely to facilitate with 'terrorist act'; or
- possessing a thing connected with a 'terrorist act'.

A person commits a 'terrorist act' offence even though the action did not occur. All that has to be shown is that there was a threat or plan to commit a terrorist act of some kind. The prosecution does not need to identify a particular act of terrorism.

Further, a person may be found guilty of a 'terrorism act' offence even if they did not know that what they were doing was connected with a 'terrorist act'. This occurs in circumstances where the person was aware of a substantial risk that the action was connected to a 'terrorist act' and it was unjustifiable to take that risk. This is known as 'recklessness'.

## **‘Terrorist Organisation’ Offences**

### **What is a ‘Terrorist Organisation’?**

A ‘terrorism organisation’ is an organisation that:

- a Court finds is either directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a ‘terrorist act’, whether or not a ‘terrorist act’ occurs; or
- the Government lists as a ‘proscribed’ organisation i.e. banned organisation.

### **When can the Government ‘proscribe’ an organisation’?**

The Australian Government can ban an organisation if it is satisfied that the organisation ‘advocates’ terrorism or is directly or indirectly engaged in preparing, planning, assisting or fostering the doing of a ‘terrorist act’.

An organisation ‘advocates’ terrorism if it:

- directly or indirectly counsels or urges, or provides instruction on, the doing of a ‘terrorist act’; or
- directly praises the doing of a ‘terrorist act’ where there is substantial risk that the praise may lead a person to engage in a ‘terrorist act’.

An organisation can be deemed to ‘advocate’ terrorism whether or not a ‘terrorist act’ occurs.

There are currently 20 organisations listed as ‘terrorist organisations’ under the *Criminal Code Regulations 2003*. These organisations can be found at

<http://www.nationalsecurity.gov.au/Listedterroristorganisations/Pages/default.aspx>.

### **What are the offences related to ‘terrorist organisations’?**

Under Australian law, it is an offence to:

- be a (formal or informal) member of;
- recruit for;
- provide training to or receive training from;
- provide support or resources to;
- associate with; or
- directly or indirectly acquire funds from, make funds available to, or collect funds for

a ‘terrorist organisation’. A person may be found guilty of many of these offences if they knew or were ‘reckless’ as to whether or not it was a ‘terrorist organisation’.

However, for a person to commit the offences of being a member of or associating with a ‘terrorist organisation’, they must know they the organisation is a ‘terrorist organisation’. The person must as soon as they find out that they are a member of, or are associating with someone who is a member of or who promotes or directs the activities of a ‘terrorist organisation’, take all reasonable steps to cancel their membership and stop associating with the person(s).

### **What does ‘associating with terrorist organisations’ mean?**

‘Associating with terrorist organisations’ means to meet or communicate with a person who is a member of a ‘terrorist organisation’ or with someone who promotes or directs the activities of a ‘terrorist organisation’.

It is an offence to associate with a ‘terrorist organisation’ if the association occurs two or more times and provides support which is intended to assist the organisation to expand or continue to exist. A person may commit the offence even if they did not know that the organisation was on the banned list, as long as they knew that the organisation was ‘engaged in preparing, planning, assisting or fostering the doing of a terrorist act’.

However, if the ‘associating’ occurs with a close family member about purely a family or domestic matter or during the course of

practising a religion at a place of public religious worship (i.e. a mosque), a person would not be guilty of the 'associating' offence.

## Other terrorism related offences

### What is the offence of 'financing' terrorism and terrorists?

It is an offence to provide or collect funds, or to make funds available to another person, where there is a substantial risk that the funds will be used to facilitate or engage in a 'terrorist act'. A person may be guilty of the offence even if a 'terrorist act' does not occur.

### What is the offence of 'dealing' with terrorists?

It is an offence to 'deal' with the money or assets of a person or organisation listed under the *Charter of United Nations Act 1945* (Cth) ('Consolidated List'). This list contains over 3,000 individuals and organisations. You can find the list on the website of the Department of Foreign Affairs and Trade at <http://dfat.gov.au/international-relations/security/sanctions/Pages/consolidated-list.aspx>.

The Australian Transactions and Reports Analysis Centre (AUSTRAC) monitors bank accounts and the movement of money in Australia. The Minister may freeze assets if the assets belong to or are derived from a listed terrorist organisation.

### What do I need to know if I am donating money to a charity?

A person who makes a donation to a charity may commit the offence of 'financing' terrorism if they knew that there was a substantial risk that the donation will be used for terrorism purposes and it was unjustifiable to take the risk (i.e. recklessness).

When making a donation to a charity or a community organisation, the Muslim Legal Network (NSW) advises that a person should:

- make reasonable inquiries about the organisation to find out about its activities, including reviewing its website and annual reports, to check that the organisation is transparent with its programs and funds;
- inquire with the organisation about where the funds will be going and for what purpose, and who will ultimately receive the funds;
- keep written records of your inquiries, including who you spoke to and the date you spoke to them;
- keep receipts or records of your donations;
- ensure that the organisation you are donating to is not one of the 'proscribed terrorist organisations' or one of the organisations on the 'Consolidated List' (see above);
- consider donating to specific projects or programs and keep written records of that intention;
- check third-party or government databases, such as the Register of the Australian Charities and Not-for-profits Commission (ACNC), for background details of the organisation and/or financial reports. The website for ACNC is: <http://www.acnc.gov.au/ACNC/Home/ACNC/Default.aspx>.

This is **not** an exhaustive list of things a person can do to ensure they are an informed donor.

### What is the offence of 'advocating' terrorism?

It is an offence for a person to 'advocate' the doing of a 'terrorist act' or the commission of a 'terrorism offence' if the person intentionally engages in that conduct 'reckless' as to whether another person will engage in a terrorist act or commit a terrorism offence. To 'advocate' means to 'counsel,

promote, encourage or urge'. This law covers terrorism both in Australia and overseas.

A person acts 'recklessly' if they know that there is a substantial risk that their behaviour will 'advocate' terrorism and it is unjustifiable to take that risk.

If an organisation commits this offence, they can be 'proscribed' as a terrorist organisation.

This is a broad offence. It potentially covers a range of situations, including:

- encouraging or promoting an armed struggle against a government or occupying force of a country or region. This law applies regardless of the humanitarian record of that government or occupying force;
- 'sharing' or 'liking' a post on social media about the commission of a 'terrorist act' or a terrorism offence;
- supporting or encouraging political boycotts that may lead to serious disruption or interference with infrastructure.

Unfortunately, the exact situations to which this law could apply are unclear. The provision is new and its wording is broad.

The defence of 'good faith' is available to persons charged under this provision. This includes persons who, in good faith, try to:

- show that any government policies, counsels or actions are mistaken;
- point out errors or defects in a government, the Constitution, legislation or administration of the Commonwealth or any state or territory with a view to reforming those errors or defects;
- urge another person to lawfully bring change to any law, policy or practice either in Australia or abroad;
- point out anything that produces feelings of ill-will or hostility between different groups with the aim of resolving tensions;

- discuss anything in connection with an industrial dispute or an industrial matter; or
- publish a report or commentary about a matter of public interest.

It is the defendant's responsibility to prove to the court that one of the above defences applies to them.

When considering a defence, the court can also take other factors into account. This includes whether the acts were done:

- for the development, performance, exhibition or distribution of an artistic work; or
- during any statement, publication, discussion or debate made or held for genuine academic, artistic or scientific purpose or any other genuine purpose in the public interest; or
- in the dissemination of news or current affairs.

The Muslim Legal Network (NSW) advises any person who wishes to participate in a public discussion, including on social media, to make it clear at the outset that the discussion is not intended to encourage acts of violence. Rather, the emphasis is on pointing out errors of government policies and actions and on using lawful means to bring about change to these laws, policies and practices.

The wording of the disclaimer should be as clear and concise as possible. The disclaimer should be repeated during Questions and Answers so as to ensure that the rules of discussion are made clear to all attendees.

### **What are the 'sedition' offences?**

Sedition includes language or speech that incites the rebellion against a government or its public order. Sedition offences include:

- urging another person to overthrow by force or violence the Australian Constitution, any Australian

government or the lawful authority of the federal government;

- urging another person to interfere by force or violence with federal parliamentary elections or constitutional referenda;
- urging a racial, religious, national or political group to use force or violence against another group or a member of a group in circumstances where it would threaten the peace, order and good government of Australia; or
- urging another person to engage in conduct intended to assist an organisation or country at war with Australia, or engaged in armed hostilities against the Australian Defence Force, except if the assistance was to provide humanitarian aid.

The sedition offences cover conduct that is both intentional and reckless to the result and circumstances.

It is a defence to these offences to have acted in good faith. It is the same 'good faith' defence as in the offence of 'advocating terrorism' and the responsibility of proving the defence is on the defendant.

## **Impact of engaging in 'terrorism' or of being found guilty of a 'terrorism' offence**

### **Cancellation of Australian Citizenship**

The new citizenship revocation laws (which came into force on 12 December 2015) extend the Government's powers to revoke the citizenship of 'dual citizens' who engage in 'terrorism'. The laws also apply to nationals of another country.

Previously, a dual citizen lost their Australian citizenship if they **served** in the armed forces of a country at war with Australia. The person ceased to be an Australian citizen at the time they commenced to serve in such armed forces.

The new laws introduce additional ways a person may lose their Australian citizenship if they engage in various kinds of conduct that is 'inconsistent with their allegiance to Australia'. The new laws apply to any dual citizen aged 14 years or older.

Under the new laws, a person may 'renounce' (i.e. automatically revoke) their Australian citizenship in two circumstances:

1. If a person engages in 'terrorism' related conduct outside Australia or leaves Australia after engaging in such conduct without being tried for any offence related to the conduct. This is known as 'renunciation by conduct'.
2. If a person serves in the armed forces of a country at war with Australia or fights for, or is in the service of, a declared 'terrorist organisation' outside Australia.

There is no need for a person to be charged with or convicted of a criminal offence to renounce their citizenship in the above circumstances. The person loses their Australian citizenship *at the time* they engage in 'terrorism' related conduct or commence to serve or fight. They may only find out about the cancellation of their citizenship when they are issued a notice by the Government. The Government may also determine not to issue such notice but is required to reconsider issuing the notice at later times.

The Minister may also determine that a dual citizen ceases to be an Australian citizen if they have been convicted of certain terrorism offence(s) and sentenced to at least 6 years imprisonment. The Government will need to take into account public interest before making such a decision.

#### *How does 'renunciation by conduct' work?*

A dual citizen may renounce (i.e. automatically revoke) their Australian citizenship if they engage in the following 'terrorism' related conduct:

- engaging in international ‘terrorist’ activities using explosive or lethal devices;
- engaging in a ‘terrorist act’;
- providing or receiving training connected with a ‘terrorist act’;
- financing ‘terrorism’ or a ‘terrorist’;
- engaging in foreign incursions and recruitment; or
- directing the activities or recruiting for a ‘terrorist organisation’.

In order for a dual citizen to lose their Australian citizenship based on the above conduct, they must have acted with the intention of advancing a political, religious or ideological cause *and* with the intention of:

- coercing, or influencing by intimidation, the government of the Commonwealth, a State, a Territory or a foreign country or part of it; or
- intimidating the public or a section of the public.

### **Suspension/surrender of travel documents**

#### *Australian passports*

The Government can suspend the Australian passport of any person for 14 days if it thinks that the person may leave Australia to damage Australia’s security or the security of a foreign country and the passport should be suspended to prevent them from engaging in such conduct. If an order for suspension is made, the Government may also require the person to surrender their Australian passport. These laws apply to other travel documents issued by the Australian Government.

#### *Foreign travel documents*

The Government can stop a person from leaving Australia by ordering them to surrender their foreign passport (and other foreign travel documents). The Government can only do this if it thinks that the person is going overseas to damage Australia’s security or the security of another country and the

passport should be surrendered to prevent the person from engaging in such conduct.

### **Cancellation of Australian Visas**

The Immigration Minister has broad powers to refuse or cancel visas of any non-citizen based on character grounds and when it is considered in the national interest to do so.

The Minister may also cancel the visa of a person who is outside Australia in an emergency situation. If ASIO makes an assessment about a person outside Australia that they might be, directly or indirectly, a risk to security and the assessment contains a recommendation that all visas held by such person be cancelled, the Government **must** cancel a visa held by such person. Such emergency cancellation of visas must be revoked after 29 days unless there is a further assessment by ASIO against the person.

### **Cancellation of welfare payments**

The Government can stop and deny eligibility for welfare payments of any person based on security grounds. The types of payments that can be stopped, or denied eligibility for, are:

- family assistance;
- parental leave pay or dad and partner pay; and
- social security payments and concession cards.

The Government can exercise this power in the following situations:

- if a person’s Australian passport is refused to be issued or cancelled because of a determination that the person is likely to engage in conduct that might prejudice the security of Australia or a foreign country; or
- if a person’s visa is cancelled because of an assessment made by ASIO that the individual is directly or indirectly a risk to security.

There is no expiry period for a decision made in respect of a person by the Government to stop, or deny eligibility for, their welfare payments. Nonetheless, after every 12 months, the Government must consider revoking such decisions.

## Legal Help in NSW

If you need legal advice, you may contact:

### Legal Aid NSW

Tel: 9219 5000  
<http://www.legalaid.nsw.gov.au>

Call or visit the website for details of your closest Legal Aid office

### Legal Aid Hotline (for under 18s)

Tel: 1800 101 810

### Community Legal Centres NSW

Tel: 9212 7333  
[www.clcsw.org.au](http://www.clcsw.org.au)

Call or visit the website for details of your closest Community Legal Centre

### Law Society of NSW

Tel: 9926 0333  
<http://www.lawsociety.com.au>

Call or visit the website to find a private lawyer close to you



Muslim Legal Network NSW

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