

# TERRORISM (COMMONWEALTH POWERS) BILL 2002 (WA)

## CLAUSE NOTES

### Clause 1

Contains the short title and the purpose of the proposed Act which is to refer certain matters relating to terrorist acts to the Commonwealth Parliament in accordance with section 51 (37) of the Commonwealth Constitution, so that the Commonwealth Parliament has comprehensive powers to make laws about those matters. This reference of power by Western Australia and the other States will enable the Commonwealth Parliament to re-enact (in the same terms) the terrorism offences which are in Part 5.3 of the Commonwealth Criminal Code (which were inserted in that Code by the *Security Legislation Amendment (Terrorism) Act 2002* (Clth)) so that those offences will apply uniformly throughout Australia in circumstances which express and implied Commonwealth legislative powers (other than section 51(37)) may not cover. The reference of power will also enable the Commonwealth Parliament to amend those and related provisions. The Commonwealth legislation will (as indicated in Clause 100.8 in Schedule 1) provide that any such amendment (whether made under referred powers or under the Commonwealth's own powers) requires the approval of a majority of the States and Territories (and of at least 4 States).

### Clause 2

Provides for the commencement of the proposed Act on a day appointed by proclamation of the Governor.

### Clause 3

Defines terms used in the proposed Act. In particular:

- (a) ***terrorism legislation*** is defined to mean 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.
- (b) ***criminal responsibility legislation*** is defined to mean the provisions of Chapter 2 of the Commonwealth Criminal Code (which deals with general principles of criminal responsibility), as in force from time to time.

### Clause 4

Refers the following matters to the Parliament of the Commonwealth:

- (a) the matters to which the provisions of the text set out in Schedule 1 relate, but only to the extent of the making of laws with respect to those matters by including those provisions in the Commonwealth Criminal Code in the terms, or substantially in the terms, of that text, and
- (b) the matter of terrorist acts or of actions relating to terrorist acts, but only to the extent of the making of laws with respect to that matter by making express amendment of the terrorism legislation or the criminal responsibility legislation.

## Clause 5

Enables the State to terminate the references by proclamation of the Governor (with 3 months' notice).

## Schedule 1

Contains the text of the proposed Commonwealth legislation that is to be enacted by the Commonwealth Parliament in pursuance of the reference of power made by the States. These offences are identical to the offences currently contained in Part 5.3 of the *Criminal Code Act 1995* (Clth) which were inserted by the *Security Legislation Amendment (Terrorism) Act 2002* (Clth).

The main offences in proposed new Part 5.3 of the Commonwealth Criminal Code are as follows:

- (a) engaging in a terrorist act (proposed section 101.1) or doing any act in preparation for or planning a terrorist act (proposed section 101.6),
- (b) providing or receiving training connected with a terrorist act (proposed section 101.2),
- (c) possessing things connected with a terrorist act (proposed section 101.4),
- (d) collecting or making documents likely to facilitate a terrorist act (proposed section 101.5),
- (e) directing the activities of a terrorist organisation (proposed section 102.2),
- (f) membership of a terrorist organisation (proposed section 102.3),
- (g) recruiting for a terrorist organisation (proposed section 102.4),
- (h) training, or receiving training from, a terrorist organisation (proposed section 102.5),
- (i) getting funds to or from a terrorist organisation (proposed section 102.6),
- (j) providing support to a terrorist organisation (proposed section 102.7),
- (k) financing a terrorist act (proposed section 103.1).

The proposed offences carry penalties ranging from 10 years to life imprisonment. Proposed section 100.1 defines a **terrorist act** as an action or threat of action done or made with the intention of advancing a political, religious or ideological cause, and coercing or influencing by intimidation a government or intimidating the public. Action falls within the definition if it causes serious physical harm or death, serious damage to property, endangers another person's life, creates a serious risk to the health or safety of the public or a section of the public or seriously interferes with, disrupts or destroys an electronic system. Action constituting advocacy, protest, dissent or industrial action that is not intended to cause serious physical harm or death, endanger another person's life or create a serious risk to the health or safety of the public or a section of the public is excluded from the definition.