

FACT SHEET

Terrorism Legislation (Miscellaneous Amendments) Bill 2015

- The Terrorism Legislation (Miscellaneous Amendments) Bill 2015 seeks to amend the *Terrorism (Preventative Detention) Act 2005* and the *Police Powers (Public Safety) Act 2005*.
- The need to amend both Acts has arisen primarily as a result of the Council of Australian Governments' (COAG) agreed response to recommendations from the *Review of Australia's counter-terrorism legislation* that was commissioned by COAG in 2012. It also addresses issues raised in the 2nd Annual Report of the Independent National Security Legislation Monitor and the emergence of national security issues being caused by Australians travelling to Syria and Iraq to engage in hostile activity.
- The amendments to the *Terrorism (Preventative Detention) Act 2005* seek to:
 - extend the current sunset clause, which takes effect on 31 December 2015, to 31 December 2025;
 - update the definition of 'terrorist act' so that it remains consistent with the *Commonwealth Criminal Code Act 1999* (the Code), noting that the definition of 'terrorist act' in the Code can only be changed with the agreement of the states and corresponding amendments to states' referral of powers legislation.
 - change the test for applying for a preventive detention order to 'suspect on reasonable grounds' that a person will engage in a terrorist act or preparatory conduct.
 - change the test for applying a preventative detention order to preserve evidence by clarifying that in seeking such an order, the preventative detention of a person must be 'reasonably necessary' to preserve evidence of, or relating to, a terrorist act;
 - provide for an application for a preventative detention and a prohibited contact order, to be made verbally, by fax, email or other form of electronic communication in urgent circumstances;
 - enabling an application for a preventative detention order to be made in respect of a person whose full name is not known, provided the subject of the order is otherwise identified, for example, by the use of a part name, alias or physical description.
- The amendments include additional safeguards where an application for a preventative detention order or prohibited contact order is made verbally, by fax, email or other form of electronic communication in urgent circumstances. These include:

- Where an urgent application for a preventative detention order or prohibited contact order is made orally in person or by fax, email or other electronic means of communication, the order must not be made unless the Supreme Court or senior police officer is satisfied that to apply by such means was necessary because of urgent circumstances.
- Where an application for a preventative detention order or prohibited contact order is made orally, information given by the applicant to the Supreme Court or senior police officer in connection with the application must be verified or given on oath or affirmation, unless the Supreme Court or senior police officer is satisfied that it is not practical to administer an oath or affirmation.
- Where an application for a preventative detention order or prohibited contact order is made orally, the Supreme Court or senior police officer must ensure there is either an audio or audio-visual recording of the application (at the time the application is made) or that a written record of the details of the application and any information given in support of the application is made as soon as practicable after the order is made.
- The amendments to the *Police Powers (Public Safety) Act 2005* seek to extend the current sunset clause to 31 December 2025 and update the definition of 'terrorist act' so that it is consistent with the Code.
- The sunset period for both Acts is being extended in recognition of the fact that the terrorist threat remains ongoing and real. Extending the sunset clauses will ensure that law enforcement agencies continue to have the necessary powers to prevent and disrupt terrorist activity.