



New South Wales

# 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.



New South Wales

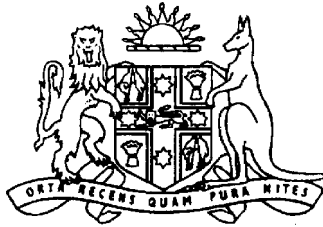
# Crimes Legislation Amendment (Terrorism) Bill 2004

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New South Wales

# Crimes Legislation Amendment (Terrorism) Bill 2004

No. , 2004

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## A Bill for

An Act to amend the *Crimes Act 1900* and other Acts in connection with terrorist related offences and powers.

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See also: *Sydney Opera House Trust Amendment Bill 2004*.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Crimes Legislation Amendment (Terrorism) Act 2004</i> .	3 4
<b>2 Commencement</b>	5
(1) This Act commences on the date of assent, except as provided by subsection (2).	6 7
(2) Sections 3 and 4, and Schedules 1 and 2, commence on a day or days to be appointed by proclamation.	8 9
<b>3 Amendment of Crimes Act 1900 No 40</b>	10
The <i>Crimes Act 1900</i> is amended as set out in Schedule 1.	11
<b>4 Amendment of Criminal Procedure Act 1986 No 209</b>	12
The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 2.	13 14
<b>5 Amendment of Terrorism (Police Powers) Act 2002 No 115</b>	15
The <i>Terrorism (Police Powers) Act 2002</i> is amended as set out in Schedule 3.	16 17
<b>6 Amendment of State Emergency and Rescue Management Act 1989 No 165</b>	18 19
The <i>State Emergency and Rescue Management Act 1989</i> is amended as set out in Schedule 4.	20 21



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**Schedule 1 Amendment of Crimes Act 1900**

(Section 3)

**[1] Section 4 Definitions**

Insert at the end of the section:

- (7) A reference in any offence under this Act to causing any poison or other destructive or noxious thing to be administered to or taken by any person includes a reference to causing any person to inhale, take or be exposed to the poison or thing by its release into the person's environment.

**[2] Section 48**

Omit the section. Insert instead:

**48 Causing explosives to be placed in or near building, conveyance or public place**

- (1) A person who causes an explosive to be placed in or near:
- (a) a building, or
  - (b) a vehicle, vessel, train or other conveyance, or
  - (c) a public place,

with the intention of causing bodily harm to any person, is guilty of an offence.

Maximum penalty: Imprisonment for 14 years.

- (2) A person commits an offence under this section whether or not:
- (a) any explosion occurs, or
  - (b) any bodily harm is caused.

**[3] Section 55 Possessing or making explosives or other things with intent to injure**

Omit "five years". Insert instead "10 years".

**[4] Part 3B, heading**

Insert "explosives," before "firearms".

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<b>[5] Section 93FA</b>	1
Insert after section 93F:	2
<b>93FA Possession or making of explosives</b>	3
(1) A person who possesses an explosive in a public place is guilty of an offence.	4
Maximum penalty: Imprisonment for 5 years.	5
(2) A person who possesses or makes an explosive, under circumstances that give rise to a reasonable suspicion that the person did not possess or make the explosive for a lawful purpose, is guilty of an offence.	6
Maximum penalty: Imprisonment for 2 years or 50 penalty units, or both.	7
(3) An offence against subsection (2) is a summary offence.	8
(4) A person is not guilty of an offence against subsection (1) or (2) for possessing or making an explosive if the person satisfies the court that he or she had a reasonable excuse for doing so or did so for a lawful purpose.	9
<b>[6] Section 200 Possession etc of explosive or other article with intent to destroy or damage property</b>	10
Omit “is liable to imprisonment for 3 years”.	11
Insert instead “is liable (if the article is an explosive) to imprisonment for 7 years or (if the article is not an explosive) to imprisonment for 3 years”.	12
<b>[7] Section 203A Definitions</b>	13
Insert at the end of the definition of <i>public facility</i> :	14
(e) a public computer system, including a computer system used for the operation of a public facility, for the provision of banking services or for other services to the public.	15
<b>[8] Section 545D Unlawful making or possession of explosives</b>	16
Omit the section.	17

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<b>[9] Section 545E Possession of dangerous articles other than firearms</b>	1
	2
Omit the section and insert it (re-numbered as section 93FB) in appropriate order in Part 3B.	3
	4
<b>[10] Section 357 Searching for and seizing firearms etc</b>	5
Omit “section 545E” from section 357 (1) (b).	6
Insert instead “section 93FB”.	7

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**Schedule 2 Amendment of Criminal Procedure Act  
1986**

(Section 4)

**Schedule 1 Indictable offences triable summarily**

Insert “93FA (1),” after “section” in item 6 of Table 2.

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<b>Schedule 3</b>	<b>Amendment of Terrorism (Police Powers) Act 2002</b>	1
		2
	(Section 5)	3
<b>[1]</b>	<b>Section 5 Authorisation of special powers to prevent terrorist acts</b>	4
	Omit “an imminent threat of a terrorist act” from section 5 (a).	5
	Insert instead “a threat of a terrorist act occurring in the near future”.	6
<b>[2]</b>	<b>Section 14A</b>	7
	Insert after section 14:	8
<b>14A</b>	<b>Power to give directions to government agencies</b>	9
(1)	The Commissioner of Police or other police officer referred to in section 8 may, for the purposes of facilitating the exercise of the special powers conferred by this Act, give a government agency directions with respect to the exercise of the powers or functions of the agency.	10 11 12 13 14
(2)	The government agency is authorised and required to comply with the direction.	15 16
(3)	In this section: <i>government agency</i> includes a government department, a public or local authority, a State owned corporation and any member or officer of any such department, authority or corporation, but does not include a parliamentary or judicial body or its members or officers.	17 18 19 20 21 22
<b>[3]</b>	<b>Section 19A</b>	23
	Insert after section 19:	24
<b>19A</b>	<b>Cordon around target area</b>	25
(1)	A police officer may, for the purposes of stopping and searching under this Part persons, vehicles or premises in a target area, place a cordon around the target area or any part of it.	26 27 28 29
(2)	A cordon may include any form of physical barrier, including a roadblock on any road in or in the vicinity of the target area.	30 31

**Schedule 4 Amendment of State Emergency and  
Rescue Management Act 1989**

(Section 6)

**Section 4 Definition of “emergency”**

Insert “, terrorist act” after “explosion” in section 4 (1).

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