



# Natural Disaster Relief and Recovery Arrangements

## Guideline 5

### Process for determining a terrorist act is an eligible disaster

1. The *Criminal Code Act 1995* (the Code) provides a definition of a terrorist act. An onshore act of terrorism can be declared under the *Terrorism Insurance Act 2003* (by the Commonwealth Treasurer)<sup>1</sup>.
2. There are existing protocols for the declaration of a *terrorist act* which set out the procedures between the Commonwealth Treasurer and Attorney-General.
3. The *Minister* is responsible for determining the event to be a *terrorist act* for the purposes of an *eligible disaster* under the *determination*. However, this does not preclude *states* from writing to the *Minister* seeking advice on whether the *Minister* considers the event to be a *terrorist act* for the purposes of the *determination*.
4. Importantly, if the *Minister* determines the event to be a *terrorist act* for the purposes of an *eligible disaster* under the *determination*, this does not equate to any assumption with respect to the admissibility of evidence before a Court, or the guilt of persons accused of engaging in a *terrorist act* under the *Criminal Code Act 1995*.
5. The process below for a declaration under the *determination* is based on the guidance between the Commonwealth Treasurer and the Attorney-General.

*If the Commonwealth Treasurer has determined the event is a terrorist act for the purposes of the Terrorism Insurance Act 2003:*

- a. The *department* will write to the responsible *Minister* providing advice on whether the incident should be declared a *terrorist act* for the purposes of an *eligible disaster* under the *determination*. The *department* may include any advice provided to the Attorney-General (for the purposes of briefing the Treasurer) from other Commonwealth agencies including the Australian Security Intelligence Agency (ASIO) and the Australian Government Solicitor (AGS).
- b. If the responsible *Minister* determines the event to be a *terrorist act* for the purposes of an *eligible disaster* under the *determination*, the *Minister* will write to the relevant *state*.
- c. Upon verification that the incident is a *terrorist act* under the *determination*, the *state* would follow the notification process as outlined in clause 4.2.

*If the Commonwealth Treasurer has not made a determination about the event:*

- a. The *department* will request that the responsible *Minister* consult with the Attorney-General to seek advice and information on the incident from relevant Commonwealth agencies such as the National Crisis Committee, giving consideration to the definition in the Code.

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<sup>1</sup> The Prime Minister can declare an event a terrorist act under the *Social Security Act 1991* for AVTOP (offshore events only).

- b. Based on the information provided, the *department* will write to the responsible *Minister* to seek his consideration that the incident should be declared a *terrorist act* for the purposes of an *eligible disaster* under the *determination*.
  - c. If the responsible *Minister* determines the event to be a *terrorist act* for the purposes of an *eligible disaster* under the *determination*, the *Minister* will write to the relevant *state*.
  - d. Upon verification that the incident is a *terrorist act* under the *determination*, the *state* would follow the notification process as outlined in clause 4.2.
6. It is worth noting that for the purposes of clause 4.2, the *state* cannot notify that the *terrorist act* is an *eligible disaster* until it receives a letter from the responsible *Minister* or *department*. This means that the three (3) month period for notification could not commence any earlier than the date of the letter.
  7. Due to the sensitivities of the *terrorist act*, the *state* may choose to seek the agreement of the Commonwealth, or the Commonwealth may direct the *state*, not to issue a media release (under clause 4.3.1 of the *determination*) announcing some or all of the assistance measures provided.

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