Guideline 5 – Process for determining a terrorist act is an eligible disaster

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)\(^1\).

2. There are existing protocols for the declaration of a terrorist act which set out the procedures between the Commonwealth Treasurer and the 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 Disaster Recovery Funding Arrangements 2018 (the arrangements). 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 arrangements.

4. Importantly, if the Minister determines the event to be a terrorist act for the purposes of an eligible disaster under the arrangements, 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 Code.

5. The process below for a declaration under the arrangements 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 Minister providing advice on whether the event should be declared a terrorist act for the purposes of an eligible disaster under the arrangements. The department may include any advice provided to the Attorney-General (for the purposes of briefing the Commonwealth Treasurer) from other Commonwealth agencies including the Australian Security Intelligence Organisation (ASIO) and the Australian Government Solicitor (AGS).

   b. If the Minister determines the event to be a terrorist act for the purposes of an eligible disaster under the arrangements, the Minister will write to the relevant state.

   c. Upon verification that the event is a terrorist act under the arrangements, the state would follow the notification process as outlined in clause 5.1.

\(^1\) The Prime Minister can declare an event a terrorist act under the Social Security Act 1991 for AVTOP (offshore events only).
If the Commonwealth Treasurer has not made a determination about the event:

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

b. Based on the information provided, the department will write to the Minister to seek his consideration that the event should be declared a terrorist act for the purposes of an eligible disaster under the arrangements.

c. If the Minister determines the event to be a terrorist act for the purposes of an eligible disaster under the arrangements, the Minister will write to the relevant state.

d. Upon verification that the event is a terrorist act under the arrangements, the state would follow the notification process as outlined in clause 5.1.

6. It is worth noting that for the purposes of clause 5.1, the state cannot notify that the terrorist act is an eligible disaster until it receives a letter from the 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 5.2.1 of the arrangements) announcing some or all of the assistance measures provided.

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