



Disaster Recovery Funding Arrangements 2018

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.