

## **The Commonwealth administrative framework for Counter Terrorism**

### **The National Counter Terrorism Committee**

- 2.1 In the aftermath of the September 11 2001 terrorist attacks on the United States, the Commonwealth Government initiated a review of Australia's counter terrorism arrangements. The review, under the direction of Mr Robert Cornall, Secretary of the Attorney-General's Department, reported on 29 October 2002.
- 2.2 On 5 April 2002 the Prime Minister and heads of government from the states and territories met and determined a new national framework for counter-terrorism arrangements. Under the framework responsibility for national terrorist situations would rest with the Commonwealth. The states and territories would review existing counter terrorism legislation and refer power to the Commonwealth where necessary. The existing Standing Advisory Committee on Commonwealth State Co operation for Protection Against Violence (SACPAV) would be reconstituted as the National Counter Terrorism Committee (NCTC) with a mandate to cover prevention and consequence management issues. These new arrangements were formalised in an intergovernmental agreement signed by premiers, chief ministers and the Prime Minister on 24 October 2002, in the aftermath of the Bali bombing.
- 2.3 At the same time, the Prime Minister announced a strengthening of coordination arrangements for counter-terrorism policy to bring the coordination of policy issues under the Department of Prime Minister and Cabinet. This arrangement did not affect the operational coordination role

already performed by the Protective Security Coordination Centre within the Attorney-General's Department.

- 2.4 The role of the NCTC is to develop and maintain a new National Counter-Terrorism Plan. In addition the NCTC provides strategic and policy advice to governments, coordinates national counter-terrorism capability, facilitates the sharing of relevant intelligence information and reports to COAG on Australia's preparedness in this area.
- 2.5 The Commonwealth structure for dealing with a national terrorist situation begins with the Prime Minister and the national security committee of Cabinet (NSCC). Subject to their direction, the Commonwealth then operates through the Secretaries Committee on National Security, the secretariat within the Department of Prime Minister and Cabinet and relevant Departments and agencies depending on the nature of the incident involved.
- 2.6 At the operational level the National Counter-Terrorism Plan has a number of organisational elements. The Commonwealth Counter-Terrorism Committee coordinates core counter-terrorism agencies and their activities and meets on a monthly basis. This Committee includes Commonwealth and state and territory officers from premiers departments, chief ministers' departments and police forces. The Committee consists of representatives from key Commonwealth agencies. It is chaired by the Director of the Protective Security Coordination Centre and its role is to consider and determine threat levels.
- 2.7 Two divisions within the Attorney-General's Department have key roles to play in managing the consequences of a terrorist attack. They are the Protective Security Coordination Centre (PSCC) and Emergency Management Australia (EMA). While the immediate response to any attack would be undertaken by state and territory police and emergency services, the Commonwealth coordinates the national response through the PSCC and EMA under a number of cooperative plans and arrangements.
- 2.8 The existing administrative structure was supported in the 2002 budget with additional funding for the Attorney-General's Department of \$14.4 million over four years to enable the PSCC watch office to operate on a 24 hour basis. An additional \$17.8 million was also provided in the 2002 budget to provide additional equipment and resources for managing the consequences of a terrorist attack in each state and territory.

## **The Critical Infrastructure Advisory Council**

- 2.9 In addition to the administrative arrangements outlined above the Commonwealth has established a Critical Infrastructure Advisory Council to put in place a framework for government and business cooperation on threats to critical infrastructure, particularly information infrastructure. The Council provides a forum for the interchange of ideas and concerns from the private sector, essential utilities and government.

## **The role of the Protective Security Coordination Centre**

- 2.10 The Protective Security Coordination Centre (PSCC), a division of the Attorney-General's Department provides a single coordination point to respond to a terrorist situation.
- 2.11 The ministerial level National Counter-Terrorism Committee aims to ensure nationwide cooperation between all relevant Commonwealth, state and territory agencies for the prevention, response, investigation and management of the consequences of any threats or acts of terrorism in Australia. In support of the Committee's role, the PSCC coordinates Australia's response capability and has established key relationships with all the relevant Commonwealth agencies as well as all of the premiers' departments and police services and forces within the states and territories.
- 2.12 The PSCC maintains a watch office. The watch office is currently operating on a twenty-four hour basis. It ensures immediate communication between the Commonwealth and state and territory premiers and police departments. The watch office monitors domestic situations, and should an incident be identified as a terrorist situation, it facilitates communications between the relevant agencies.

## **Terrorist attack response management arrangements**

- 2.13 If a terrorist attack were to occur in Australia, the following crisis management arrangements would be activated:
- A police forward command post would be established at the incident scene;
  - A police operations centre would be activated at police headquarters to exercise overall command;
  - The Commonwealth's PSSC Watch Centre would be activated –

- the PSSC Director would liaise with the State Police Commander to ascertain the nature of the incident and the response measures taken;
- the PSSC Director would advise Ministers and key Commonwealth agencies;
- a meeting of the Commonwealth Counter Terrorism Committee would be convened (within one hour) – a Special Incident Task Force may be established;
- Emergency Management Australia would liaise with State emergency services to determine whether additional support is required;
- the Australian Defence Force would liaise with State police to determine what, if any, support is required;
- a State crisis centre would be established to manage State government interests – it would include a ‘duty state minister’, state policy advisers, the Police Commissioner, Commonwealth representatives (including ADF representatives) and media liaison officers;
- if the incident is declared to be a ‘national terrorist situation’, the Commonwealth Government assumes responsibility for determining policy and strategies. In such a situation the Commonwealth would consult closely with affected State and Territory governments to ensure effective use of all available resources.<sup>1</sup>

## The Role of Emergency Management Australia

2.14 Renamed Emergency Management Australia (EMA) in 1993 from its original form as the Department of Defence Natural Disasters Organisation, its role is to coordinate the Commonwealth response to any disaster situation whether man made or natural. EMA has the ongoing responsibility for enhancing national emergency management arrangements and community safety. It achieves this through information awareness, training and education and direct assistance to states and territories through a state support package. EMA was allocated \$17.8 million over four years (from 2001-2) for the procurement of detection equipment, personal protective equipment, decontamination equipment and casualty care equipment to be readily available in the event of a chemical, biological or radiological incident. The equipment has been delivered. The funding will also be used to enhance training of first responders. EMA has developed partnerships with state and territory emergency management agencies including police, fire, ambulance,

---

1 Mr E Tyrie, Director PSSC, transcript 9 December 2002, pp. 7-8

emergency services and non-government organisations. The entire emergency management and services sector is involved in prevention, preparedness, response and recovery. The idea is for there to be an all hazards, multi-agency, whole of government response.<sup>2</sup>

## **National priority security issues post September 11 and Bali**

- 2.15 Key issues for security enhancement in Australia identified in evidence to the Committee centred on intelligence, including threat assessment, response capability enhancement, legislative coordination across state and Commonwealth jurisdictions and critical infrastructure protection.

### **Intelligence, including threat assessment**

- 2.16 In a speech to an Australian Defence Force Academy conference in July 2003 the Prime Minister, the Hon John Howard MP said:

It goes without saying that in the war on terror nothing is more important than intelligence. More resources into intelligence gathering and the role of intelligence in hopefully anticipating, however generic that anticipation may be, is absolutely central.<sup>3</sup>

- 2.17 In the 2002-3 Budget, the government allocated additional funding of \$46.9 million to fund the further development of technical investigative capacity in the Australian Security Intelligence Organisation (ASIO), Australian Federal Police (AFP) and National Crime Authority (NCA) to strengthen intelligence and detection in relation to terrorist threats.<sup>4</sup>
- 2.18 The review into Australia's counter terrorism arrangements conducted by Mr Robert Cornall, Secretary of the Attorney-General's Department, which reported to the government on 29 October 2001, recommended a number of measures to increase intelligence capability and sharing. Under the National Counter Terrorism Plan published in June 2003, ASIO has primary responsibility for conducting investigations of terrorist threats and for analysing and distributing information on threats to relevant Commonwealth agencies and to state and territory police services. ASIO

---

2 Mr D Templeman, Director General Emergency Management Australia, transcript, 9 December 2002, pp.9-10

3 Prime Minister Hon John Howard MP, transcript of address to the Australian Defence Force Academy's Safeguarding Australia – Frontline Issues Conference, Canberra, 31 July 2003.

4 Budget Paper No 2, 2002-3, p. 61.

also maintains a 24 hour monitoring and alert unit. In addition ASIO issues Threat Assessments in relation to specific events, facilities, sectors or individuals. The Commonwealth Counter Terrorism Committee determines the level of national counter-terrorism alert based on ASIO assessments of the threat environment. The alert level informs national preparation and planning and dictates levels of precaution and vigilance to minimise the risk.<sup>5</sup>

- 2.19 Australia relies upon a strong intelligence- led prevention and preparedness regime to support its counter-terrorism strategy. That strategy encompasses targeted prevention measures based on risk management principles and maintaining capabilities to manage various types of terrorist threats, attacks and their consequences.<sup>6</sup> The Australian Strategic Policy Institute (ASPI), stated:

It is true that the government has put significant additional resources into counter-terrorist intelligence capabilities, including significant additional resources into ASIO. My instinct is that the scale of the threat that we now face, the complexity of the intelligence challenge and the centrality of successful intelligence in meeting that threat means that we should revisit that...ASIO needs the capacity to operate at a much lower threshold of risk management – that is, it needs the capacity and resources, in particular the people, to go out there and follow every lead as exhaustively as they can.<sup>7</sup>

- 2.20 During the course of the Inquiry incidents have taken place involving security breaches at airports, and a terror suspect was investigated and deported after information was received from the French Government.<sup>8</sup> In view of these incidents the Committee inquired whether there may be grounds for suggesting that the level of risk management currently applied by ASIO to their investigations undergo some adjustment.
- 2.21 The Committee asked the then General Manager of National Affairs from the AFP, Mr Ben McDevitt, whether the AFP was satisfied with the quality of the information presently exchanged between police and intelligence services in South-East Asia on emerging terrorist threats. In Mr McDevitt's view Australian authorities could currently expect 'a reasonable picture
- 

5 National Counter-terrorism Plan, National Counter Terrorism Committee, June 2003, paras. 14, 17, and 18 p. 26.

6 National Counter-terrorism Plan, National Counter-Terrorism Committee, June 2003, para. 12, p. 26.

7 Mr H White, transcript, 9 December 2002, p. 30.

8 For example, investigations concerning former Qantas baggage handler Bilal Khazal and French terror suspect Willie Virgile Brigitte.

and we would get warning of and intelligence on particular groups or individuals who might be conspiring or planning to carry out some sort of terrorist or other criminal activity in the region.<sup>9</sup>

2.22 On 17 October 2003 the Attorney-General, Hon Philip Ruddock MP, announced the creation of a National Threat Assessment Centre within ASIO. The Centre is to operate 24 hours a day seven days a week to issue assessments of threats to Australia and its interests abroad. The government announced expenditure of over \$50 million over the next five years on the Centre to provide an integrated, whole of government approach to threat assessments. The demand for such assessments has grown since the year 2000 from approximately 600 to 1800 per year.<sup>10</sup> The Attorney explained that ‘intelligence is the key to applying your resources in the most effective way and [because] you can’t have enough people managing every situation that is possible...you have to be able to make judgements as to what level of risk exists.’<sup>11</sup>

2.23 The establishment of the National Threat Assessment Centre would appear to address the ASPI’s concern that ‘the characteristic of terrorism as an intelligence challenge is that it does draw in a very wide range of collection methodologies and other kinds of disciplines’ and that although:

I think that we have quite effective arrangements in place to allow ASIO and other agencies to draw on one another’s expertise in a sort of coordinated way...it does seem to me that it is possible to go beyond coordination to a single integrated, nationally directed counter-terrorist campaign – particularly one which reliably identifies the gaps in what we know, which is the hardest thing to do.<sup>12</sup>

2.24 The Terrorism Assessment Centre should achieve the above outcome if an attempt is in fact made to move ‘beyond coordination’ as the Attorney claims it will:

It will bring together for the first time a number of agencies in a single centre to provide a comprehensive, whole-of-government briefing. In addition to the ASIO organisation, it will include the Australian Federal Police, the Australian Secret Intelligence Service ASIS, the Defence Intelligence Organisation (DIO) as well

---

9 Mr B McDevitt, transcript, 9 December 2002, p.35

10 Attorney-General Hon Phillip Ruddock MP, press conference transcript, 17 October 2003, 12.53pm, pp5-7.

11 Attorney-General Hon Phillip Ruddock MP, press conference transcript, 17 October 2003, p.9.

12 Mr H White, transcript, 9 December 2002, p. 30.

as the departments of Foreign Affairs and Trade, the Department of Transport and Regional Development and the Office of National Assessments.<sup>13</sup>

## Legislative coordination and consistency across jurisdictions

2.25 The Department of Prime Minister and Cabinet told the Committee in evidence on 9 December 2002, that there were inconsistencies in the legislation of every State and Territory covering the issues surrounding the response to a possible terrorist incident. The Department noted for example that while some jurisdictions were:

reasonably well advanced in legislation relating to effectively quarantining a place or suburb, with powers to stop people leaving if they may be contaminated or to stop people from entering to avoid them from being contaminated...I do not think that there is a uniform set of national laws relating to this in each state and territory.<sup>14</sup>

2.26 On 5 April 2002 the Prime Minister and the leaders of the States and Territories met and determined a new National Framework for Counter – Terrorism Arrangements. It was agreed that under that framework:

Responsibility for ‘national terrorist situations’ would rest with the Commonwealth:

- (a) The states and territories agreed to review the legislation and refer power to the Commonwealth where necessary;
- (b) The communication of intelligence between the states and the Commonwealth would continue to be improved; and
- (c) SACPAV would be reconstituted as the National Counter-Terrorism Committee, with a mandate to cover prevention and consequence management issues.

These new arrangements were formalised in ‘An Agreement on Australia’s National Counter-Terrorism Arrangements’ signed by the premiers, the chief ministers and the Prime Minister on 24 October 2002.<sup>15</sup>

2.27 Under the terms of the Agreement signed on 24 October 2002, the Commonwealth, States and Territories agreed to make the necessary legislative changes in their jurisdictions to ensure that terrorists can be

---

13 Attorney-General Hon Phillip Ruddock MP, press conference transcript 17 October 2003, p.5.

14 Mr A Metcalfe, Transcript, 9 December 2002, p.22.

15 Mr A. Metcalfe, transcript, 9 December 2002, p. 3.



prosecuted effectively under relevant criminal law.<sup>16</sup> Relevant Commonwealth legislation enacted since the Agreement includes the:

- Security Legislation Amendment (Terrorism) Act 2002
- Suppression of Financing of Terrorism Act 2002
- Criminal Code Amendment (Suppression of Terrorist Bombings) Act 2002
- Criminal Code Amendment (Terrorism) Act 2002
- Criminal Code Amendment (Terrorist Organisations) Act 2002
- Border Security Legislation Amendment Act 2002
- Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003.

2.28 Broadly, the Commonwealth anti-terror legislation listed above covers the issues of the financing of terrorist activities, the creation of criminal offences relating to international bombing incidents, and the broadening of the scope for the issuing of telecommunications interception warrants. ASIO's powers to detain suspects have been specifically strengthened as have its information gathering powers. Certain organisations have also been listed as terrorist organisations under the Criminal Code Amendment Act enabling association with them or providing assistance to them to be prosecuted as a criminal offence.

2.29 As part of the scope of the original 5 April 2002 Commonwealth, States and Territories Agreement on Terrorism and Multi-Jurisdictional Crime, the leaders of all jurisdictions also agreed to reform relevant laws relating to money laundering, to legislate for a national set of powers for cross border investigations covering controlled operations and assumed identities legislation, electronic surveillance devices and witness anonymity with legislation to be settled within 12 months. Also as a priority jurisdictions agreed to work to ensure the elimination of existing administrative and legal barriers in pursuit of criminals operating in more than one jurisdiction.<sup>17</sup>

2.30 When the Committee held its first public hearing on 9 December 2002, the Department of Prime Minister and Cabinet noted that the state and territories were actively examining arrangements to put the Agreement

---

<sup>16</sup> *An Agreement on Australia's National Counter-Terrorism Arrangements*, 24 October 2002, para. 2.5

<sup>17</sup> *Commonwealth and States and Territories Agreement on Terrorism and Multi-Jurisdictional Crime*, 5 April 2002, paras. 14, 15, 20.

into effect.<sup>18</sup> Since this evidence was published, action taken in the various state and territory jurisdictions to amend or introduce complementary legislation in fulfilment of the Agreement is discussed in this Report in the Chapters dealing with specific States and Territories below.

## Commonwealth response capabilities to assist the States and Territories

### Tactical Assault Group (East)

- 2.31 In the 2002-3 Budget the Australian Government committed considerable resources (\$219.4 million over four years) to raise a second Tactical Assault Group (TAG) force to match the already existing Special Air Services Regiment based in Perth and available to assist the civil authorities to deal with a terrorist incident.
- 2.32 Tactical Assault Group East will be in addition to the already existing Incident Response Regiment already in existence as the 4<sup>th</sup> Battalion Royal Australian Regiment (Commando) at Holsworthy Barracks in Sydney. The Regiment has additional personnel support from the Royal Australian Navy. The Tactical Assault Groups are trained to be able to conduct offensive recovery operations beyond the range and scope of other Australian Defence Force units, including recapturing structures, freeing hostages and supporting high-risk search teams.
- 2.33 The Incident Response Regiment (IRR) is able to respond to chemical, biological, radiological, nuclear or explosive incidents, both domestically and in support of Australian forces deployed overseas in a high-risk environment. The federal 2002-3 budget included \$121 million over four years to make the Incident Response Regiment a permanent ADF capability. The regiment is defensive and protective by design and has no offensive capability. Its personnel are able to conduct high-risk searches with detection equipment and dogs. It is able to disarm and dispose of a device. It can decontaminate and treat victims and exposed areas, and it can analyse the hazardous materials discovered on sites.<sup>19</sup>
- 2.34 In its *Review of the Defence Annual Report 2001-2* this Committee noted the 19 December 2002 announcement by the Prime Minister that the TAG East initiative would 'deliver an additional 310 highly trained combat personnel along with associated support personnel to supplement
- 

18 Mr A Metcalfe, transcript, 9 December 2002, p.22.

19 Major General Gillespie, transcript 9 December 2002, pp.11,12.

Australia's existing Special Forces,' and that the new 300 personnel would come from existing units with new recruits to fill the gaps thus created.<sup>20</sup>

- 2.35 As the Committee concluded in its Review of the Defence Annual Report above, the ADF has yet to deliver the expected outcomes made in the Prime Minister's announcement and to meet the considerable personnel challenges involved in doing so. In answer to a question from the Committee about the possibility that the creation of a TAG East would be an unnecessarily costly duplication of the existing tactical response capacity represented by the WA Regiment, Major-General Gillespie noted that the changed nature of the terrorist threat with which Australia was now confronted meant that there was now a real possibility of simultaneous multi-jurisdictional attacks. In that case there was no redundancy in existing capability and the second TAG has 'created an ability to respond quickly across jurisdictions with two capabilities.'<sup>21</sup>

## Australian Federal Police capabilities

- 2.36 The AFP has significant resources to conduct proactive intelligence-led investigations of terrorist activity through a network of overseas liaison officers. It has considerable expertise in investigating transnational criminal activity which may be terrorist related such as drug-trafficking, people-smuggling, money laundering and electronic fraud. To support this work the AFP has established a Transnational Crime Coordination Centre within AFP Headquarters which will maximise intelligence sharing between operational teams engaged on individual investigations. The AFP told the Committee that it was also seeking to enhance the co-operative relationship already existing with ASIO and the border security agencies, and the Departments of Immigration and Customs. The AFP noted with respect to intelligence sharing, that:

The AFP and ASIO are working together to develop the best ways forward to operate under the new legislation. We are also in the process of establishing joint counter-terrorism teams in the state capitals, with support and participation from the local police jurisdictions.<sup>22</sup>

- 2.37 The AFP told the Committee that the legislative changes brought in by the government in 2002 were important in bringing a range of activities

---

20 Hon John Howard MP, Prime Minister, Media Release, *Expansion of Special Forces Counter Terrorist Capability and New Special Operations Command*, 19 December 2002.

21 Major General Gillespie, transcript 9 December 2002, p. 26.

22 Mr B McDevitt, AFP, transcript, 9 December 2002, p. 13.

associated with terrorist activity 'more clearly within the ambit of criminal investigations and prosecutions.' These activities include:

Recruiting, training, planning, funding and equipping for terrorist acts. The passage of this legislation communicates an expectation from the government that those involved in terrorism will be brought to account...and acknowledges the clear benefits of identifying and prosecuting such people before they have a chance to act on their schemes.<sup>23</sup>

- 2.38 The experience gained by the AFP in the aftermath of the Bali bombing demonstrated the full range of its investigative and forensic capability. The subsequent apprehension and conviction of the terrorists by the Indonesian National Police also demonstrated the effectiveness of the co-operation between them and the AFP. The AFP commented in evidence to the Committee that the levels of co-operation achieved in the Bali investigation were 'not something that was achieved in seven days; it was something that was achieved over several years of building on those sorts of relationships'.<sup>24</sup>
- 2.39 The international co-operation shown after the Bali bombing was reinforced by enhancements to the AFP's existing networks of overseas liaison officers and at the inter-governmental level with a series of in principle agreements between the AFP and heads of law enforcement agencies in Malaysia, Thailand and Singapore for the establishment of memoranda of understanding to enable joint investigations and exchange of information on transnational crime issues.<sup>25</sup> With an enhanced intelligence gathering and intelligence sharing capacity and with legislative backing for proactive action against known and proscribed terrorist organisations, the AFP should be better placed to prevent terrorist acts in the future.

---

23 Mr B McDevitt, AFP, transcript, 9 December 2002, p.13.

24 Mr B McDevitt, AFP, transcript, 9 December 2002, p. 13.

25 Mr B McDevitt, AFP, transcript, 9 December 2002, p.13.