

COUNCIL OF AUSTRALIAN GOVERNMENTS' COMMUNIQUÉ

SPECIAL MEETING ON COUNTER-TERRORISM

27 SEPTEMBER 2005

The Council of Australian Governments (COAG), comprising the Prime Minister, Premiers, the Chief Ministers of the Australian Capital Territory and the Northern Territory and the President of the Australian Local Government Association, held a special meeting in Canberra today to consider Australia's national counter-terrorism arrangements.

This Communiqué sets out the agreed outcomes of the discussions.

Current Security Environment

COAG was briefed on the current global and domestic security environment by the Directors-General of the Office of National Assessments and the Australian Security Intelligence Organisation, and noted that the national counter-terrorism alert remains at medium, as it has since 12 September 2001. A terrorist attack in Australia continues to be feasible and could occur. COAG also discussed the implications of the July 2005 terrorist bombings in London for Australia's security and counter-terrorism arrangements.

National Emergency Protocol

COAG noted that national emergency arrangements are well developed and are coordinated across Australia through a range of inter-governmental fora.

COAG also noted the importance of a consistent and co-ordinated response by Commonwealth, State, Territory and local government at the onset of any national emergency. Leaders noted that the current arrangements have the capacity to manage any foreseen substantial emergencies. Leaders agreed to develop a protocol to ensure effective coordination and communication in the unlikely event of an emergency of greater magnitude.

COAG Senior Officials will report back to COAG out-of-session on the protocol.

Security of Mass Passenger Transport

COAG agreed that the security of mass passenger transport continued to be a high priority for Australian governments. COAG noted the findings of a recent assessment of Australia's urban mass passenger transport security arrangements, conducted jointly by the Commonwealth and State and Territory

Governments through the National Counter-Terrorism Committee (NCTC) and the Transport Security Working Group, a sub-group of the Standing Committee on Transport. COAG also agreed to strengthen and build on existing transport security arrangements through a range of measures which aim to:

- further develop and implement technological and other solutions;
- broaden the capacity of transport operators, their staff and the public to contribute to the security of surface transport;
- facilitate incident planning and preparation by operators; and
- support an integrated approach to transport precinct security.

The NCTC will report to COAG on progress in implementing these measures by mid-2006.

A National Approach to Closed-Circuit Television

COAG discussed the significant role that closed-circuit television (CCTV) played in the identification of the perpetrators of the July 2005 terrorist attacks in London and its potential to assist police counter-terrorism investigations. COAG noted that jurisdictions already have extensive CCTV networks across transport, public spaces and major facilities. COAG agreed that each jurisdiction would undertake and share across governments a review of the functionality, location, coverage and operability of mass passenger transport sector CCTV systems. This will be a first step towards a broader consideration of the use of CCTV in support of counter-terrorism arrangements.

COAG also agreed to a national, risk-based approach to enhancing the use of CCTV for counter-terrorism purposes, including the development of a National Code of Practice for CCTV systems for the mass passenger transport sector. The Code will set a policy framework, objectives, protocols and minimum requirements for the use of CCTV systems to enhance counter-terrorism arrangements so that future investment is based on appropriate risk analysis. It will also contain agreed requirements for fixed and mobile CCTV systems, and national guidelines for the collection, storage, access, use, privacy, disclosure, protection and retention of CCTV information. The Code will allow each jurisdiction to determine its own CCTV requirements having regard to the use of CCTV for local counter-terrorism purposes. COAG further agreed that a COAG Working Group, to be chaired by Victoria, would be established to develop the Code that will involve consultation with private industry. The Working Group will make an initial report to COAG in February 2006 with the draft Code.

COAG agreed to identify necessary legislative measures to ensure consistent implementation of the Code, to encourage business and industry to comply with the Code, and to work cooperatively in research, development, trial and evaluation of new CCTV technologies.

National Action Plan to build on the Principles agreed at the Prime Minister's Meeting with Islamic Community Leaders

A meeting of Islamic community leaders, the Prime Minister and other Commonwealth Ministers held on 23 August 2005 unanimously rejected terrorism in all its forms, endorsed a Statement of Principles and committed itself to work within the laws of Australia to combat intolerance and violence.

All jurisdictions are pursuing initiatives to strengthen links with Australian Muslim communities and promote respect and understanding. COAG noted the outcomes from Commonwealth and State initiatives involving faith leaders to strengthen community harmony, safety and understanding. COAG encourages inter-faith dialogue. To address further intolerance and the promotion of violence, COAG agreed to request the Ministerial Council on Immigration and Multicultural Affairs to develop a national action plan to build on the principles agreed at both the Prime Minister's August 2005 meeting and meetings between State and Territory leaders, and faith and community leaders, and to report back to COAG on progress by the end of 2005.

Strengthening Counter-Terrorism Laws

COAG considered the evolving security environment in the context of the terrorist attacks in London in July 2005 and agreed that there is a clear case for Australia's counter-terrorism laws to be strengthened. Leaders agreed that any strengthened counter-terrorism laws must be necessary, effective against terrorism and contain appropriate safeguards against abuse, such as parliamentary and judicial review, and be exercised in a way that is evidence-based, intelligence-led and proportionate. Leaders also agreed that COAG would review the new laws after five years and that they would sunset after 10 years.

COAG agreed to the Commonwealth Criminal Code being amended to enable Australia better to deter and prevent potential acts of terrorism and prosecute where these occur. This includes amendments to provide for control orders and preventative detention for up to 48 hours to restrict the movement of those who pose a terrorist risk to the community. The Commonwealth's ability to proscribe terrorist organisations will be expanded to include organisations that advocate terrorism. Other improvements will be made, including to the financing of terrorism offence.

COAG noted that in 2002 when Leaders agreed to new national investigative powers, Queensland's use of a Public Interest Monitor was recognised. COAG also noted that Queensland would continue to use the Public Interest Monitor for control orders and preventative detention.

State and Territory leaders agreed to enact legislation to give effect to measures which, because of constitutional constraints, the Commonwealth could not enact, including preventative detention for up to 14 days and stop, question and search powers in areas such as transport hubs and places of mass gatherings. COAG noted that most States and Territories already had or had announced stop, question and search powers.

The NCTC will settle the amendments to the Commonwealth Criminal Code by the end October 2005 and consider options for harmonising State and Territory legislative provisions. Details on the operation of, and safeguards for, control orders and prevention detention are attached.

Leaders also noted that the Commonwealth will consult States and Territories on:

- proposed amendments to Part IIIAAA of the *Defence Act 1903* to enhance and clarify the arrangements for calling-out the Australian Defence Force to assist civilian authorities; and
- the possible enactment of laws to prevent the use of non-profit or charitable organisations for the financing of terrorism.

Wheeler Report on Aviation Security and Policing at Australian Airports

COAG strongly supported the findings in the Wheeler Report, particularly a single command structure at Australian airports.

COAG agreed:

- to establish a unified policing model at each of the 11 counter-terrorism first response (CTFR) airports including: an Airport Police Commander, a dedicated Joint Intelligence Group, a CTFR capability and a permanent community policing presence, and at each of the five major international airports (Sydney, Melbourne, Brisbane, Perth and Adelaide), a Joint Airport Investigation Team;
- that the Commonwealth will fund under the unified model a full-time community policing presence of Australian Federal Police (AFP) officers wearing AFP uniforms under AFP command, at all 11 CTFR airports;
- that recruitment and selection of the Airport Police Commander will be undertaken by a panel which will include both Commonwealth and State or Territory representation;
- that the arrangements for the secondment or recruitment of State and Territory police to the AFP command will be finalised by the NCTC in consultation with Police Commissioners as soon as practicable;
- to conduct via the NCTC a review of information and intelligence- sharing processes between Commonwealth and State and Territory agencies to

facilitate better information flow to counter crime and terrorism in the aviation sector and to report back to COAG by mid 2006; and

- that the Department of the Prime Minister and Cabinet would lead an NCTC working group comprising relevant Commonwealth, State and Territory agencies to prepare a report on possible further refinements to terrorist incident response and crisis management arrangements at CTFR airports and report back to COAG by mid 2006.

Identity Security

The preservation and protection of a person's identity is a key concern and right of all Australians. COAG agreed to the development and implementation of a national identity security strategy better to protect the identities of Australians. The strategy will enhance identification and verification processes and develop other measures to combat identity crime. The strategy will be underpinned by an inter-governmental agreement.

COAG also agreed to:

- the development and implementation of a national document verification service to combat the misuse of false and stolen identities; and
- investigate the means by which reliable, consistent and nationally interoperable biometric security measures could be adopted by all jurisdictions.

National Standards for the Security Industry

COAG noted the important contribution the private security industry makes in supporting Australia's counter-terrorism arrangements. COAG agreed that New South Wales will undertake a review of security industry training, competency, accreditation, registration and licensing, in consultation with all other jurisdictions, to identify any variations in approaches and any response required and report back to COAG Senior Officials by February 2006.

National Counter-Terrorism Plan

COAG endorsed a revised version of the *National Counter-Terrorism Plan*, the primary document on Australia's national counter-terrorism policy and arrangements. The Plan sets out the collaborative arrangements between the Commonwealth and the States and Territories for preventing, preparing for and responding to terrorist incidents within Australia. The Plan was recently reviewed by the NCTC to take into account the lessons of Australia's first multi-jurisdictional counter-terrorism exercise *Mercury 04* held in March 2004, as well as other developments in the national arrangements since the Plan was first launched in June 2003.

Counter-Terrorism Exercises

COAG noted that the effectiveness of the United Kingdom's response to the July 2005 terrorist attacks in London had further underscored the value of regular counter-terrorism exercises.

Leaders noted that Australia's current regime of regular counter-terrorism exercises, at both the national and State and Territory levels, provides a strong framework for testing and evaluating Australia's counter-terrorism arrangements. COAG agreed to refocus the current regime in light of the lessons learned from the London terror attacks.

This refocussing will include regular drill-style exercises in all major Australian cities, focussing on transport infrastructure and other places of mass gatherings, to provide greater exercising and training of Australia's ability to manage mass-casualty incidents. Leaders agreed that these exercises should involve, where appropriate, a broad range of government agencies, local government and the private sector. The NCTC, in consultation with the Australian Emergency Management Committee and other relevant intergovernmental fora, will report back to COAG by mid-2006 on how the enhanced regime will be implemented.

COAG also noted that the second multi-jurisdictional counter-terrorism exercise, *Mercury 05*, will take place in October 2005 and will involve the Commonwealth, New South Wales, Victoria, Western Australia, South Australia and the Australian Capital Territory. It will be the largest counter-terrorism exercise conducted in Australia to date.

Promoting Public Understanding of the National Counter-Terrorism Arrangements

COAG noted that the terrorist attacks in London in July 2005 have reinforced the importance of maintaining public understanding of, and confidence in, our national counter-terrorism arrangements.

COAG agreed:

- that each government should have robust arrangements in place to provide the community, business and the media with timely, well coordinated and relevant information during a crisis; and
- to request the NCTC to develop a national strategy to explain in clear and simple terms the prevention, preparedness, response and recovery arrangements set out under the *National Counter-Terrorism Plan*, with the objectives of:

- promoting public understanding of, and confidence in, the arrangements between the Commonwealth and the States and Territories for responding to terrorist incidents,
- reassuring the community that it will be kept informed of changes to the security environment,
- reinforcing the important role that the community can play in preventing terrorist incidents, including through the reporting of possible terrorist planning and activities, and
- raising community awareness of what to expect in the event of a terrorist incident, including by providing advice and guidance on how to be prepared for emergencies and how to respond to a terrorist attack.

The NCTC will report to COAG on the strategy by mid-2006.

A Strategy for Chemical, Biological, Radiological and Nuclear Security

COAG agreed to the development of a national Chemical, Biological, Radiological and Nuclear (CBRN) security strategy focussing on prevention, preparedness, response and recovery. The strategy will be developed by the NCTC with the involvement of relevant emergency management and health agencies and in consultation with national emergency management and health government committees.

The NCTC will report to COAG on the development of the national CBRN strategy by mid-2006.

ATTACHMENT**Control Orders**

In relation to control orders COAG noted:

- the Australian Federal Police (AFP) must have reasonable grounds that issuing the control order would substantially assist in preventing a terrorist act or that a person has trained with a listed terrorist organisation before applying for a control order;
- the Attorney-General must consent to the application being made;
- if the Attorney-General consents, the AFP may apply to a court for the issue of a control order;
- the court must be satisfied on the balance of probabilities that issuing the control order would substantially assist in preventing a terrorist act or that a person has trained with a listed terrorist organisation;
- the court must also be satisfied on the balance of probabilities that each of the controls in the order is reasonably necessary, and reasonably appropriate and adapted for the purpose of protecting the public from a terrorist act;
- there is no provision for a person to be given advance notice of a control order in case a person tips off associates who are involved in terrorism. This would potentially undermine the purpose of the orders;
- however, once a court has issued a control order it must be given to a person immediately by the AFP officer who requested the order. The officer must ensure that the person understands the order;
- the control order does not come into effect until the person, the subject of the order, is notified;
- once notified, the person can immediately apply for revocation of the order. The person's lawyer is also able to obtain a copy of the order. The same court that issued the control order can revoke it;
- in addition normal judicial review processes would apply to decisions to issue or revoke control orders;

- control orders would not apply to people under 16 and would apply in a modified way to people between 16 and 18; and
- each year, the Attorney-General would report to Parliament on the operation control orders.

Preventative Detention

In relation to preventative detention orders COAG noted:

- the AFP must have reasonable grounds that making the order would substantially assist in preventing a terrorist attack or, where a terrorist act has occurred, preserve evidence;
- an AFP officer could issue an order for an initial 24 hours; that period could be extended by an issuing authority for a further 24 hours only; the total detention period allowable would be a maximum of 48 hours;
- an issuing authority would be a Magistrate or Judge who agrees to act as an issuing authority in their personal capacity;
- a person detained could not be questioned except to confirm their identity;
- any preventative detention order, as well as the treatment of the person detained, would be subject to judicial review;
- any preventative detention order, as well as the treatment of the person detained, could be subject to investigation by the Commonwealth Ombudsman;
- a person detained would be given an opportunity to contact a lawyer for these purposes as well as being entitled to contact a family member and employer solely for the purpose of letting them know they are safe but are not able to be contacted for the time being;
- in some circumstances, the right to contact a lawyer or other person could be limited - for example, if there are facts or grounds to suggest that the lawyer or other person is linked to the terrorist act; the contact with a lawyer or other person would be monitored to ensure that the communication relates solely to the purposes permitted under the legislation;
- where the person is unable to contact their nominated lawyer for security reasons, access to a security cleared lawyer would be offered to them;

- preventative detention would not apply to people under 16; special rules would apply for people between the ages of 16 and 18 and people incapable of managing their own affairs;
- consistent with Australia's international human rights obligations, any person being preventatively detained must be treated with humanity and respect for human dignity and must not be subjected to cruel, inhuman or degrading treatment. Any official who fails to treat a detained person in accordance with these obligations is subject to an offence punishable by two years' imprisonment; and
- each year, the Attorney-General would report to Parliament on the operation of preventative detention orders.