



Australian Government

Department of Home Affairs

A national picture on use of force legislation as it relates to counter-terrorism

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2 May 2018

Introduction and legislative overview

Current legislative settings around Australia

- All Australian jurisdictions have legal frameworks that govern the use of lethal force in appropriate specified circumstances.
- These frameworks provide guidance to police officers in exercising their functions and powers in a variety of contexts, including an active armed offender situation.

When is Use of Force needed?

New South Wales

Use of Force in an Active Armed Offender situation

Law Enforcement (Powers and Responsibilities) Act 2002

- Permits a police officer exercising a function under a law 'to use such force as is reasonably necessary to exercise the function'.

Use of Force in a declared terrorist act

Terrorism (Police Powers) Act 2002

- Part 2AAA enables the Commissioner of Police to declare an incident is or is likely to be a terrorist act and that planned and coordinated police action is required.
- Once declared, police officers involved in the authorising, directing or using of force that is reasonably necessary, in the circumstances as the police officer perceives them, do not incur any criminal liability.
- The action taken by the officer must be part of a police action plan, and be taken to defend any persons threatened by the terrorist act or to prevent or terminate their unlawful deprivation of liberty.

Victoria

Use of Force in an Active Armed Offender situation

Crimes Act 1958

- Permits a police officer to ‘use of force to prevent the commission of an indictable offence and the prevention of suicide’.
- A Bill is being finalised for introduction this year to clarify the use of force power that “puts beyond doubt that it applies to pre-emptive action, including lethal force, employed in response to a life-threatening act where it may be the last opportunity to effectively and safely intervene.”

Use of Force in a declared terrorist act

Crimes Act 1958

- As above.

Queensland

Use of Force in an Active Armed Offender situation

Criminal Code Act 1899 and Police Powers and Responsibilities Act 2000

- A police officer may use lethal force only if he or she suspects the commission of an offence punishable by life imprisonment, a life threatening act or an act that cannot be prevented without action likely to cause death or grievous bodily harm.
- A police officer is required to call on the person to stop, if practicable.

Use of Force in a declared terrorist act

Criminal Code Act 1899 and Police Powers and Responsibilities Act 2000

- As above.

Western Australia

Use of Force in an Active Armed Offender situation

Criminal Code Act 1913

- Expressly permits the use of lethal force, provided the act is in self-defence or to defend another person from a harmful act though this belief must be reasonable.

Use of Force in a declared terrorist act

Criminal Code Act 1913

- As above.
- In March 2018, Western Australia introduced a bill to amend the *Terrorism (Extraordinary Powers) Act 2005* to allow the Police Commissioner to make a declaration, and provide police officers with sufficient legal protection to allow them to respond to terrorist incidents.

South Australia

Use of Force in an Active Armed Offender situation

Criminal Law Consolidation Act 1935

- Permits the use of lethal force where the conduct was reasonably proportionate.
- For the purpose of defence, the force must have been 'reasonably proportionate to the threat that the defendant genuinely believed to exist.'

Use of Force in a declared terrorist act

Criminal Law Consolidation Act 1935

- As above.
- 2018 election commitment to amend provisions to give police greater latitude to use lethal force in the context of an officially declared terrorist incident.

Northern Territory

Use of Force in an Active Armed Offender situation

Criminal Code Act

- Permits use of lethal force in 'circumstances in which force causing death or serious harm is justified'.

Use of Force in a declared terrorist act

Criminal Code Act

- As above.

Australian Capital Territory

Use of Force in an Active Armed Offender situation

Crimes Act 1900

- Provides that a person shall not use more force than is necessary and reasonable when arresting a person.
- A police officer shall not cause the death of, or grievous bodily harm to, the person, unless the officer believes on reasonable grounds that it is necessary to so do to protect life or to prevent serious injury to the officer or another person.

Use of Force in a declared terrorist act

Crimes Act 1900

- As above.

Tasmania

Use of Force in an Active Armed Offender situation

Criminal Code Act 1924

- A person [including a police officer] is justified in using, in the defence of himself or another person, such force as, in the circumstances as he believes them to be, it is reasonable to use.

Use of Force in a declared terrorist act

Criminal Code Act 1924

- As above.

Commonwealth

Use of Force in an Active Armed Offender situation

Criminal Code Act 1995

- Impliedly permits the use of force up to and including lethal use of force with the exception of protecting property, prevent trespassing or to remove a person trespassing.

Use of Force in a declared terrorist act

Criminal Code Act 1995

- As above.

**What does this tell us
and what else needs
to be done?**